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Supreme

No. 7

STANDARD DREDGING CORPORATION,
APPELLANT,

vs.

FRIEDA S. MILLER, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, AND MIKE CASSABETAKIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT.

FILED JANUARY 11, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 722

STANDARD DREDGING CORPORATION,
APPELLANT,

vs.

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[fol. 1]

IN NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

In the Matter of the Claim for Benefits under Article 18 of the Labor Law Made by MIKE CASSARETAKIS, Claimant; STANDARD DREDGING CORPORATION, Employer-Appellant; FRIEDA S. MILLER, as Industrial Commissioner, Respondent

STATEMENT UNDER RULE 234

This proceeding was commenced by claimant's request for a hearing upon disclosure that local office records indicated claimant had no record of earnings in covered employment. A Notice of Hearing, dated July 12, 1940 was served on the Employer-Appellant for a hearing before Referee Louis J. Naftalison to determine whether claimant worked in covered employment. The hearing was held before the Referee on September 5th and 11th, 1940. On October 9, 1940, the Referee rendered his decision holding that claimant worked in covered employment and was entitled to be credited with his earnings with the Employer-Appellant. The Employer-Appellant filed a notice of appeal on November 4, 1940 to the Unemployment Insurance Appeal Board from the decision of the Referee. On March 3, 1941, the Unemployment Insurance Appeal Board rendered its [fol. 2] decision, affirming the decision of the Referee. An appeal from the decision of the Appeal Board was taken by the Appellate on April 1, 1941.

The name of the Employer-Appellant is Standard Dredging Corporation. The name of Respondent is Frieda S. Miller, as Industrial Commissioner. The attorneys for Appellant are Kirlin, Campbell, Hickox, Keating & McGrann. The attorney for the Respondent is John J. Bennett, Jr., Attorney General. The Claimant at the hearing before the Referee appeared in person but did not appear before the Appeal Board. There has been no change of party or attorneys herein.

[fol. 3] STATE OF NEW YORK, DEPARTMENT OF LABOR

Unemployment Insurance Appeal Board

[Title omitted]

NOTICE OF APPEAL—April 1, 1941

SIRS:

Please Take Notice that Standard Dredging Corporation, employer in the above entitled proceeding, hereby appeals to the Appellate Division of the New York Supreme Court in and for the Third Department, from the decision of the Unemployment Insurance Appeal Board made on the 3rd day of March, 1941, and from each and every part thereof.

Dated, New York, N. Y., April 1, 1941.

[fol. 4] Yours, &c., Kirlin Campbell Hickox Keating & McGrann, Attorneys for Employer-Appellant, Office & P. O. Address, 120 Broadway, New York, N. Y.

To: John J. Bennett, Jr., Esq., Attorney General of the State of New York, Attorney for Respondent, 80 Center Street, New York, N. Y.; Department of Labor, 342 Madison Avenue, New York, N. Y.

[fol. 5] BEFORE DEPARTMENT OF LABOR

DECISION OF APPEAL BOARD IN CASE NO. 4014-40—March 3, 1941

STATE OF NEW YORK,
Department of Labor:

Unemployment Insurance Appeal Board

Re: Name 511-314-40R

S. S. No..... Employer No.....

The employer appeals from the decision of the referee dated October 9, 1940 holding that the claimant worked in covered employment and is entitled to be credited with his earnings with said appellant.

Hearings were held before the referee at which all parties appeared and were accorded full opportunity to be

heard. Briefs submitted on behalf of the Industrial Commissioner and the employer have been considered by the Board.

After a careful review of the record, testimony and evidence adduced before the referee, and due deliberation having been had thereon, and having found that the referee's findings of fact and conclusions of law are fully supported by the evidence in this case, and that no errors of fact or law appear to have been made, the Board adopts the findings of fact and the conclusions of law made by the referee as the findings of fact and conclusions of law of this Board.

Opinion

The Board is of the opinion that the referee made proper findings of fact and correctly determined the issues involved in this case. This Board's recent opinion in Appeal Board [fol. 6] No. 3604-40 is so applicable to the instant facts that we incorporate it herein by reference. Appeal Board No. 2552-40, relied on by the appellant, is not in point. The latter case involved a "vessel propelled by steam commissioned to carry petroleum products." In the instant case, the vessel involved is a non-self propelled dredge carrying neither cargo nor passengers.

Decision

Claimant worked in covered employment within the meaning of the New York State Unemployment Insurance Law and is entitled to be credited with his earnings with the appellant as fixed by the referee.

The decision of the referee is affirmed.

Dated: March 3, 1941.

(S.) John E. McGarry, Member.

[fol. 7] BEFORE DEPARTMENT OF LABOR

NOTICE OF APPEAL TO APPEAL BOARD

[Title omitted]

To Division of Placement and Unemployment Insurance, 342 Madison Avenue, New York, N. Y.

SIRS:

Appeal is hereby taken from the decision of Louis J. Naftalison, Referee, dated October 9, 1940, on the following grounds:

(1) That said decision is contrary to the decisions of the Unemployment Insurance Appeal Board, to the Opinion of the Attorney General, and to the accepted and settled construction of the New York Unemployment Insurance Law.

(2) That the claimant was employed as a member of the crew of a vessel, documented under the laws of the United States, on navigable waters of the United States.

[fol. 8] (3) That said employment is maritime in nature and subject to the exclusive jurisdiction of the Federal Government.

(4) That, in exercise of said exclusive jurisdiction, the Federal Government exempted such employment from the provisions of the Social Security Act.

(5) That said employment is not covered by the New York Unemployment Insurance Law.

(6) That, if such employment is intended to be covered, the said Law is unconstitutional and void.

Standard Dredging Corporation, Employer-Appellant, by Kirlin Campbell Hickox Keating & McGrann, Attorneys, 120 Broadway, New York City.

To: Mike Cassaretakis, Claimant (Case No. 511-314-40R).

To: Industrial Commissioner.

[fol. 9] BEFORE DEPARTMENT OF LABOR

UNEMPLOYMENT INSURANCE REFEREES' UNIT

Claimant: Mike Cassaretakis.
Referee: Louis J. Naftalison.
S.S. No.: 124-10-5937.
At: New York City.

Case No.: 511-314-40R. On: September 11, 1940.

DECISION OF REFEREE—October 9, 1940

APPEARANCES:

Mike Cassaretakis, Claimant.
Standard Dredging Corporation, by: Walfred L. Paulson, Vice-president and Secretary; George F. Gee, Dredging Captain; Ray Pippitt, Clerk.
Kirlin, Campbell, Hickox, Keating & McGrann, by: H. Maurice Fridlund, Esq.; Roy T. Parker, Esq.; Earl Q. Kullman, Esq., of Counsel, attorneys for employer.
Division of Placement and Unemployment Insurance, Legal Bureau, by: Harry I. Rosen, Esq.

[fol. 10] Issue

Whether claimant, while employed as a cook and cooks' helper aboard a dredge, worked in covered employment.

Findings of Fact

Claimant worked aboard the dredge "Miami" from February 4, 1939 to March 15, 1939, while the dredge was located in the waters at Bayonne, New Jersey. During this period his employer was the Standard Dredging Corporation of New Jersey, the owner of the vessel.

From March 15 to August 15, 1939, claimant was employed aboard the same dredge, but during this period his employer has been established to be the Standard Dredging Corporation (a New York corporation). Both concerns are interrelated and it has been established that the New York corporation operated the dredge from March 15 to August 15, 1939, at least under a charter arrangement with the New Jersey corporation.

Claimant's services for the New Jersey corporation having been performed wholly outside the State of New York, his employment and earnings have been disregarded for the purpose of this decision.

The Standard Dredging Corporation of New York is a covered employer. During the period with which we are concerned, it was engaged in operating the dredge "Miami" in Gravesend Bay, which is adjacent to the Borough of Brooklyn, City of New York. It had a contract with the City of New York Park Department to pump material from beneath the surface of Gravesend Bay on [fol. 11] to the land in order to fill in the shore line and create an addition to a public highway under the jurisdiction of the Park Department. The dredge was non-self-propelled, but moved from spot to spot in the vicinity of its operations by means of cables or spuds. The material excavated from underneath the waters was conveyed to land by means of pipe lines attached to the dredge, and which rested upon pontoons spaced between the dredge and the shore.

A superintendent was in charge of the workers aboard the dredge, and although maritime titles were applied to these positions, the description of the work seems to indicate that their labors were principally with the operation of the dredging machinery and engines, as well as the incidental work connected therewith.

Claimant's work was that of assistant cook, dishwasher and waiter, taking care of the feeding requirements of the personnel of the dredge. He slept aboard the dredge. During the last few weeks of his employment, he served as a watchman while the dredge was out of operation and tied up.

The employer has fixed the value of claimant's maintenance at a dollar per day, and the claimant has accepted this figure as a reasonable one.

The employer has not paid contributions on the earnings of claimant and others similarly situated, because it contends that claimant is a member of a crew of a vessel and, therefore, is excluded from the coverage of the New York State Law. It further contends that the dredging operations were wholly maritime in character because they were performed following the issuance of a permit by the United States Engineer's office of the War Department. It ap- [fol. 12] pears that this governmental agency is charged

with the duty of exercising control over the navigable waters, and that it is a condition precedent to working in such waters for a permit to be issued from this agency.

The work of the dredge in this particular instance was definitely in connection with the construction of a highway on land. It carried no cargo, nor passengers. It definitely was not engaged in the general work of navigation. The personnel aboard the dredge were not required to be licensed by any federal agency. The employer's attorneys argue that it is not the use to which the dredge was put that controls, but rather its nature, and that it was adapted to do wholly maritime work in the deepening of harbors and removing of obstructions from channels, et cetera.

At the conclusion of the case there was no dispute between the parties as to claimant's earnings.

They are as follows:

Standard Dredging Corporation, (A New York corporation), 80 Broad Street, New York, New York.

1939: First Quarter, 93.31; Second Quarter, 339.96; Third Quarter, 140.83.

Decision

The attorneys for the employer spent considerable time in arguing that the dredge "Miami" is a vessel documented under the laws of the United States. This conclusion, how- [fol. 13] ever, is not controlling on the unemployment insurance issue before me. They further argue that a cook, or cook's helper, is a member of a crew of a vessel. Again, that broad proposition is not applicable to the facts in the immediate case. They further contend that the work of the dredge "Miami" in this particular instance was distinctly maritime, because it was done pursuant to a War Department permit. However, the compliance with the War Department's regulations, as to the performance of operations on the navigable waters of the United States, does not take away from the State of New York the right to tax employment such as is here concerned.

The operations of the dredge "Miami" involved construction rather than navigation. It was intimately connected with, and was part of, a distinct land operation, namely, to fill in the shore line to create a roadway on land. The work was done under the supervision of a superintendent rather than the officer of a vessel.

This case is controlled by the decision of the Appeal Board in Case No. 1180-39, which held that even though the employment involved may be maritime, that in and of itself was not sufficient to deprive the State of New York of the right to tax the payrolls concerned. The Appeal Board held that the claimant in that case, employed on a hydraulic dredge operating similar to the "Miami" in this case, worked in covered employment, and that unless Congress had reserved to itself exclusive jurisdiction in this maritime situation, the State of New York was free to legislate and tax. In this case New York has jurisdiction because all of the work here involved was performed within its territorial borders.

[fol. 14] The only question which now remains is whether claimant comes within the definition of the phrase, "officers and members of a crew of a vessel," as prescribed in the Social Security Act. The Appeal Board has ruled that this is a phrase of exclusion and should be given a narrow construction. The Appeal Board has found that the term "crew" is referred to, and is naturally and primarily thought of, as including those who are on board and aiding in the navigation of a vessel. The nature of claimant's employment with relation to the dredge upon which he worked is determinative of the question whether he was to be considered a member of a crew within the purview of the Federal Act.

Claimant, working aboard a non-self-propelled dredge operating in New York harbor to aid in land work, is definitely not a member of a crew within the compass of the Federal intention. The dredge was not engaged in navigation, nor in the transportation of passengers or freight. It had no officers in the accepted sense of that word, nor a crew, within the same meaning. Despite maritime titles, the work was in the construction field, under the direction of a superintendent, who was placed in authority above the so-called captain of the dredge.

On the basis of the Appeal Board decision, as herein discussed, I find that claimant worked in covered employment within the meaning of the Unemployment Insurance Law of the State of New York, and that he is entitled to be credited with the foregoing earnings, towards the payment of benefits due. I further hold that the employer is liable for contributions accordingly on the earnings of claimant and others similarly situated.

[fol. 15] A copy of this decision is being sent to the Bureau of Tax and Wage Records for the collection of contributions due.

Louis J. Naftalison, Referee.

9/5/40—A. Weinstein.
9/11/40—W. Newrock, Bk. #125.
10/7/40—D. Codner, Decision Only.

To: Mike Cassaretakis, 311 West 27th Street, New York, New York; Standard Dredging Corporation, 80 Broad Street, New York, New York; Kirlin, Campbell, Hickox, Keating & McGrann, Esqs., 120 Broadway, New York, New York; Harry I. Rosen, Esq.

[fol. 16] Before Department of Labor

Unemployment Insurance Referees' Unit

Notice of Hearing

Claimant: Mike Cassaretakis. Address: 311 West 27th Street, New York, N. Y.

Other Parties: Name: Standard Dredge Corporation. Address: 80 Broad Street, New York, N. Y.

Date 7/12/40. L. O. 511.

S.S. No. 124-10-5937.

You Are Hereby Notified to Appear on July 30, 1940 (Date), at 2:30 P. M. (Time) at 342 Madison Avenue, Room 1010, New York City.

Before Referee Louis J. Naftalison.

Purpose of Hearing: To determine whether claimant worked in employment subject to the Law in 1939.

[fol. 17] Important! To All Parties: You must bring to this hearing your witnesses, if any, and all evidence that has a bearing on this case, including all pay records, books, statements of earnings, et cetera.

. . . . . .

. . . . . .

Unemployment Insurance Appeal Board, by Samuel I. Kastle, Administrative Referee.

1/mm.
7/30/40.

No Adjournment of This Hearing Will Be Granted unless valid reason is presented in writing. Application for ad-

journment must be made in writing at least 4 days before the date of hearing.

See Important Information on Reverse Side

Labor UI-AB1.3

To the Employer: By the service of this notice either personally or by mail, you are made a party to this proceeding, entitled to be heard.

[fol. 18] The questions

1. Whether you are or were an employer within the meaning of and subject to the Unemployment Insurance Law or

2. Whether you are or were liable for the payment of the contributions imposed upon employers by said Law or

3. Whether you, as employer as defined by such Law, have fully complied with the obligations imposed upon employers by said Law

Or Any Other Issue Related Thereto **may be decided by the Referee herein and his decision shall not be deemed limited in its effect to the claimant herein named but shall be deemed a general determination of such questions and issues with respect to all those employed by you, for all the purposes of the Unemployment Insurance Law and such decision shall be conclusive and binding upon you, subject, however, to your right of appeal, which right you can assert *Only If You Appear At The Hearing.*** (Sections 530 & 531 of the Unemployment Insurance Law, Article 18 of the Labor Law.)

[fol. 19] BEFORE DEPARTMENT OF LABOR

REQUEST FOR HEARING ON INITIAL DETERMINATION ON STATEMENT OF EARNINGS

Claimant: Mike Cassaretakis. Address: 311 W. 27 St., New York City.

Date 6/13/40.

Local Office No. 511
S. S. Acct. No.
124-10-5937

Earnings

I request a hearing on the issue of:

Coverage [X]

Reason for Contest: I claim the following earnings in employment subject to the New York State Unemployment Insurance Law in addition to the earnings on which my Initial Determination dated ..... was based.

Employer	*Add'l Money Wages in Each Quarter*	*Other Remuneration in Each Quarter*
Standard Dredge Co.	91/160.00	91/58.50
80 Broad St.	92/275.00	92/58.50
New York City	93/170.00	93/58.50

Initial Determination was based on following earnings:

[fol. 20]

Employer	*Total Wages and Other Remuneration in Each Quarter*
As above	

(UIC 40) Signed x Mike Cassaretakis, Claimant.

Additional Information: (Names and address of other persons, witnesses, co-workers, union, etc., to be notified of hearing.)

(Illegible) (Insurance Manager or Deputy), 259 W. 14th St., N. Y. C. (Address).

[X] Contest on Original Claim.

Check box if contest has arisen subsequent to filing of Original Claim, ES-333, but prior to filing of Additional Claim, ES-333.5.

Labor ES-400.21 (5-21-40-M).

[fol. 21] BEFORE DEPARTMENT OF LABOR

Unemployment Insurance Referees' Unit

Hearing before Referee—September 5, 1940

Present: Louis J. Naftalison, Referee

Abraham Weinstein, Reporter

APPEARANCES:

Mike Cassaretakis—Claimant.
Standard Dredging Corp. by Walfred L. Paulson, Vice-President and Secretary.
Wesley H. Paulson—Bookkeeper.
Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for the Employer, by Earl Q. Kullman, Esq.
H. Maurice Fridlund, Esq.
Roy T. Parker, Esq.
[fol. 22] Harry I. Rosen, Esq., Legal Bureau, Representing the Division of Placement and Unemployment Insurance.
Hearing Held: September 5, 1940.
The case was duly called.

MIKE CASSARETAKIS, Claimant, having been duly sworn, testified as follows:

By the Referee:

Q. What is your occupation?
A. I am in the restaurant business, always before, but then I lose the business and I start to be laborer.
Q. Did you work for the Standard Dredging Corporation?
A. Yes.
Q. What work did you do for them?
A. I started with dishwasher, nineteen dollars a week.
Q. When did you start as a dishwasher?
A. Fourth of February, 1939.
Q. Do you know the day?
A. Fourth of the month.
Q. How long did you work as a dishwasher?

A. I don't remember exactly but I guess no more than six weeks and then they give me job of waiter. I wait sixty people sometimes.

Q. Where did you do your work as a dishwasher?

A. Daytime.

Q. Where?

A. Right here on Statue of Liberty.

Q. You did what?

A. I work on Statue of Liberty.

[fol. 23] Q. Did you work on the Statue of Liberty or on a boat?

A. On a boat.

Q. What is the name of the boat?

A. Miami is the name.

Q. This dredge Miami did some work around the statue of Liberty?

A. I started from there. She digged the Statue of Liberty.

Q. She digged around the Statute of Liberty?

A. Yes.

Q. Did you do dishwashing work on this dredge Miami?

A. Yes.

Q. All of your work was done on the Miami?

A. Yes.

Q. Until when did you work?

A. To August.

Q. What day in August?

A. Well, last two weeks; three weeks of August and last three weeks I was watchman because dredge lay on Coney Island.

Q. This was in 1939, is that right?

A. Yes.

Q. You say the last three weeks you worked as a watchman?

A. Yes, fifty cents an hour.

Q. Where was the dredge——

A. In the winter they made me dishwasher and I got nineteen dollars.

Q. Where was the dredge tied up when you were a watchman?

A. Coney Island. We fix Bay Parkway all the road. We finish entry down there and I was watchman.

Q. When you worked as a watchman, did you work as a waiter too?

A. No, nothing, just watchman.

Q. Was the dredge out in water or tied to a pier when you were a watchman?

A. No, tied to a pier there, yes. See, I have three payments nineteen dollars, twenty-two dollars and thirty-three cents and then thirty-four dollars.

[fol. 24] Q. Did you also receive your meals?

A. I paid my own meals when I got fifty cents an hour. I pay my own expense, just sleep.

Q. When you were a dishwasher and waiter, did you receive meals?

A. Oh yes.

Q. How many meals a day?

A. Three meals a day.

Q. When did you report for work?

A. Same day I started and after two days——

Q. No, what time of the day did you report for work?

A. When I started you mean? From seven in the morning to five in the evening.

Q. Did you get an evening meal too if you quit at five o'clock?

A. Oh, yes, we'd get it, yes.

Q. How many days a week did you work?

A. Six days a week.

Q. Did you sleep at home?

A. Lots of times I go home.

Q. Did they have a place on board for you to sleep?

A. I can sleep there if I want to stay.

Q. Did you sleep aboard the dredge?

A. Yes. If I want to sleep there, I can sleep there all the time.

Q. How often did you sleep aboard the dredge?

A. Most of the time because I can't afford to go home and come back. I get so tired working.

Q. How many men worked on this dredge?

A. Well, this dredge, sometime on Bay Parkway this Mr. Sackett——

Q. Mr. Who?

A. Mr. Sackett.

Q. What did he do?

A. He have sometimes in Bay Parkway, I don't know, sometimes three, four hundred people and the Mr. Mayor LaGuardia stop it.

Q. Ordinarily, how many people worked on board the dredge?

A. I never see less than forty-five people; lots of people they go out.

[fol. 25] Q. Will you answer my question?

A. Yes.

Q. To the best of your knowledge, about how many people worked on board the dredge when you were a dishwasher and waiter?

A. Over forty-five.

Q. When you said before that you served from sixty to seventy-five people, whom did you mean?

A. That's the men, people who come from outside to eat and they pay.

Q. What people came from the outside to eat aboard the dredge?

A. People who fix pipes outside or remove pipes or work, dig around and make partitions.

Q. When you started to work in February 1939, where was this dredge located.

A. Around the Statue of Liberty I told you.

Q. Around the Statue of Liberty?

A. Yes.

Q. How long did it remain around the Statue of Liberty?

A. We remained there near four, five weeks. I don't remember exactly. Then we pull the dredge from there to Brooklyn drydock. She repair there about three weeks or more.

Q. Did you work on board the dredge when it was in drydock?

A. I was a waiter and dishwasher. I do everything.

Q. Did the men work on board the dredge when it was in drydock?

A. Yes.

Q. What work did they do?

A. They work outside when they repair dredge. They move lot of things from there to other job and come there at night to sleep and eat.

Q. After the dredge left the Brooklyn Drydock, where did it go?

A. To Bay Parkway, start a new job.

Q. You mean the Belt Parkway?

A. Bay Parkway.

[fol. 26] Q. That is outside of Brooklyn?

A. There is Bay Ridge and there is Bay Parkway.

Q. It was in the water outside of Brooklyn, is that right?

A. Yes.

Q. How long did you work at the Bay Parkway Brooklyn Section?

A. I think we were there, let me see, in February, March. I think from March to August to finish the job.

Q. Then you say the last three weeks of August you worked as a watchman?

A. Yes.

Q. Where was the dredge then?

A. She parked around the end of the Coney Island, the other side. Coney Island, over there.

Q. Was the place different from Bay Parkway place when you were a watchman?

A. Same thing, no different. You see if you take Bay Parkway this way, and that is to the end.

Q. What work did you see the dredge do?

A. Pump the sand.

Q. Pump sand and do what?

A. Make it land.

Q. That is to pump the sand under the water and pump it to a place on land, is that it?

A. Yes.

Q. About how big was the dredge?

A. She is big enough.

Q. Big enough does not mean anything to me. How long?

A. I don't exactly know, it is big boat. I can't say how long.

Q. What kind of machinery did it have on board?

A. I don't know, it is big machine and she can pump twelve, fifteen miles from where she stand.

Q. Was the dredge able to go on its own power?

A. No.

Q. How did it get from one place to another?

A. They have big boat to tie it up and pull it.

[fol. 27] Q. You mean a tugboat?

A. Yes, big tugboat always. Dredges never work themselves. I used to work on dredges year ago.

Q. Did it have any pipelines running from the dredge to the land?

A. Yes.

Q. How were those pipelines fastened? Did they go into the water and did they rest on something in the water?

A. They got the thing.

Q. Pontoons?

A. Yes, pontoons, otherwise they can't go. They get special men divers which go down in the bottom and put pipes down and then come up. When we finish job the same men go down again to pull pipes out. I don't know how, but somehow.

Q. Were there any lifeboats on this dredge?

A. We have, what do you call those things which every ship have? Those things you put on?

Q. You mean life preservers?

A. Yes. We all have that.

Q. Did you take part in any lifesaving drill?

A. No.

Q. Who was your boss?

A. On the dredge? My boss is the man in the kitchen, the chef. He is still working on dredge.

Q. What is his name?

A. Leon Tavlis.

Q. Who were these men to whom you served meals? Were they members of the dredging outfit?

A. All the people work in the dredge from chef, engineer, everybody.

Q. Did this dredge carry any cargo or freight?

A. What do you mean?

Q. Did it carry merchandise or freight or cargo?

A. No.

Q. Did it carry any passengers?

A. No, of course not.

[fol. 28] Q. Was there a captain on board the dredge?

A. Captain? Yes, he is on board all the time.

Q. Did you take any orders from the captain?

A. Of course, he is boss for everything.

Q. What orders did he give you?

A. If you don't do your work he fires you.

Q. Is he in charge of the boat?

A. He is in charge of everything. If you don't do your duties he fires anybody.

Q. Where did you sleep on board the dredge, in hammocks or berths?

A. We have rooms just like the big boats, like one on the other.

Q. With bunks?

A. Yes, bunks.

Q. Did you have to have any certificate or license to work on board the dredge?

A. No.

Q. Did you have to have any license?

A. I didn't have any license. I give them my Social Security card and I give my citizen papers and they give me job.

Q. Have you got any seaman's papers?

A. No. That is first time I work in my life and I like it too.

Q. Did they take off Social Security deductions from your pay?

A. Well, I don't know. When the Company hired me they asked me for my Social Security card and my citizen papers and I give it to the man of the boat, I don't know what his name and he gets everything and then they give it to me back.

Q. Did you have one per cent taken off your pay every week?

A. You see, they go——

Q. I am asking you, did they take off one per cent from your pay?

A. That I don't know what they do.

Q. When they paid you $19.00 a week, did they take off nineteen cents every week?

[fol. 29] A. I didn't see anything like that. They paid me $19.00 a week. I don't know what they do. One thing I know, I go to the branch office and I take the card and I report when I start to work.

Q. You mean the unemployment insurance office in 14th street?

A. Yes. And I go there and then I tell——

Q. Just a minute.

The Referee: Any questions Mr. Rosen?

By Mr. Rosen:

Q. Mr. Cassaretakis, where were you hired?

A. The chef of the kitchen sends me a post card and I start to work there. Soon I start to work they ask me if I am citizen and if I have social security card.

Q. I mean were you hired on the boat or were you hired in an office here in New York or anywhere else?

A. On the boat.

Q. How did you get to the boat from land?

A. We take the little steamboat. It comes every morning at the dock and they take us.

Q. Whose steamboat is that, do you know?

A. The Company.

Q. What is the name of the steamboat?

A. I don't know the name.

Q. What dock did you take it at?

A. It is in Bayonne. Only one time a week they do that. Rest of the days I sleep there. After we move to Brooklyn I take them very often; it was very cold there.

Q. You stated that when the dredge was *in drydock in* Brooklyn——

A. Yes, then I go home every night.

[fol. 30] The Referee: Let him finish the question first.

Q. You said that when the boat was in drydock you had a lot of people on the boat and some people would come in and I understand that they would pay for their meals?

A. Yes.

Earl Q. Kullman: Will you please repeat that question?

Q. Did you say at any time that people would come on the boat and eat and pay for their meals?

A. Yes.

Q. When was that?

A. On Bay Parkway, the people working.

Q. Working for Standard Dredging Company?

Earl Q. Kullman: Didn't he say that nobody paid for their meals?

Mr. Rosen: Only in drydock. I myself understood——

The Referee: I have a very definite idea what he said. I asked him to explain before how he served sixty or seventy people when there were only forty-five on board the dredge and he said that the people who worked along the side of the dredge, broadside, also ate aboard the dredge. That's what he said according to my notes.

By Mr. Rosen:

Q. Those people who came on in addition to the forty-five, were they employees of the Standard Dredging Corporation?

A. Yes.

[fol. 31] Q. Were those meals given to them free of charge or did they pay for their meals?

A. They paid a dollar a day, anybody pays a dollar a day he board there.

Q. You said the dredge pumped sand and delivered it on land?

A. Yes.

Q. Can you tell us, geographically speaking, on what land was that sand delivered?

A. Right on Bay Parkway, that is three blocks farther.

Q. You mean in what we call, Brooklyn? The lines extended from the dredge to Brooklyn?

A. I will explain you. There is the sea, there is Bay Parkway the end of the water. Here it is all finished ground and the water is ten feet deep. They put partitions down here by carpenters and they put the pipes down and they make all even ground.

Q. Is that ground in Brooklyn?

A. It is highway now, the Bay Parkway highway.

The Referee: You mean the Belt Parkway?

Mr. Cassaretakis: All right. That job belongs to the state contractor with that job.

By Mr. Rosen:

Q. Mr. Cassaretakis, were there any other waiters on this dredge?

A. Only one waiter.

Q. That was yourself?

A. Yes.

Q. How many cooks?

A. That's two cooks, night and day cook.

Q. Two shifts?

A. Yes.

Q. Any dishwashers?

A. One daytime and one night time.

[fol. 32] Q. Any other kitchen help?

A. No.

Q. Which shift did you work?

A. I work day shift. Every Sunday night or Friday, on once a week I shift to night shift and I cook for the people myself and the dishwasher and the waiter took eighteen or twenty people once a week. That is why they

give me from nineteen dollars, the company raise me from nineteen to twenty-three because I did that once a week.

Q. Did they have any porters on the ship to clean the dining room?

A. Oh sure, we clean that. The dishwasher after breakfast every morning scrub the dining room and scrub the kitchen. Everything is nice, rooms looks nice and clean. Changed the beds every Saturday.

Q. Who took charge of the changing of the beds in the rooms?

A. The stewards.

Q. How many stewards were there?

A. Only one, the chef.

Q. There was one steward?

A. That is all, he is the chef.

Q. He is the steward and the chef also?

A. Oh yes.

Q. Let us get this straight Mr. Cassaretakis. There were two cooks, two dishwashers, one waiter and one steward?

A. No, the steward up there used to take care of everything. When I was working the dishwashers do the kitchen and the floor and I take the linen and change the beds or and then I come back there and we prepare for lunch. Then we finish lunch, we take our rest and we prepare for five o'clock everybody eats.

Q. There was not any steward on the boat?

A. No.

Q. There was somebody else doing the steward's work?

A. Of course, sure.

[fol. 33] Q. Do you know whether the cooks were paid weekly or daily or how?

A. By the week, everybody get paid by week.

Mr. Rosen: That is all.

The Referee: All right, you may cross examine Mr. Kullman.

Mr. Rosen: One more question, may I?

The Referee: All right, go ahead.

By Mr. Rosen:

Q. What were the hours of the day shift?

A. The day shift is from eight to five.

Q. What were the hours of the night shift?

A. The night shift is from five to one. As soon as you get through it's all over.

Q. Did the day shift wait until the next shift came in to relieve it before it left?

A. The night shift come there five o'clock in the morning. In the meantime the day shift go and help kitchen finish the breakfast.

Q. The day shift would come and help the night shift finish the breakfast and then the night shift would go home?

A. Yes.

Q. In the evening would the night shift come on and help the day shift finish the dinner?

A. Yes.

Q. So during the day—I withdraw that.

Cross-examination.

By Mr. Kullman:

Q. Mr. Cassaretakis, did you keep a record of when you began work and how much you received?

A. Yes. I don't keep very good but I know I get paid by check. Have you got my checks with you?

Q. Just answer my question now. You have no record [fol. 34] of when you began work, have you?

A. What do you mean?

Q. You have no record of when you worked or how many weeks you worked, you have no written records?

A. No, but I know it's from February to August, February 4th.

Q. You are certain you began work on February 4th?

A. That's right.

Q. February 4, 1939?

A. Yes.

Q. You have no record of that, just a recollection. You just remember?

A. Yes, that's all.

Q. Wasn't it the next month you began work, wasn't it in March?

A. No.

Q. How do you remember it was February rather than March?

A. I remember because it was very snow and cold night when they called me from my house.

Q. Who called you?

A. The chef.

Q. What was his name?

A. He is in the dredge now.

Q. What is his name?

A. Leo Tavlis, you know the name.

Q. You are sure he called you in February and you began working on February 4th, 1939?

A. Yes, sir.

Q. When he hired you how much did he say he'd give you?

A. I tell you the truth. If he told me it was dishwasher I don't go. He played a trick on me; he took me for waiter and then I had to wash dishes.

Q. You could have given up the job the next day, couldn't you?

A. No, because I need work.

Q. Why couldn't you leave the next day if you didn't like the work?

A. Because if you know how much I need to work——

[fol. 35] Q. Then if he had told you it was a dishwasher job, you would have taken it anyway?

A. When I see it I say, well, I need to work.

Q. After you got the job you decided it was not so bad after all?

A. Yes.

Q. Better than nothing?

A. Absolutely.

Q. How much did he say he'd give you?

A. Nineteen dollars a week.

Q. Each week you got nineteen dollar- a week?

A. Yes.

Q. Exactly?

A. Yes.

Q. Not eighteen dollars and some odd cents but nineteen dollars?

A. He gave me nineteen but when he hired me he says he don't say exactly nineteen but the first pay he give me nineteen so what am I going to do.

Q. You got $19.00 a week?

A. Yes.

Q. Were you paid every week?
A. Yes, every week nineteen dollars.
Q. On what night were you paid?
A. Every Friday afternoon.
Q. Did you get a check?
A. Check every time.
Q. To your order? A check made out to Cassaretakis?
A. Yes.
Q. Nineteen dollars?
A. Yes.

Mr. Kullman: Your Honor, may I have before beginning the case, may I have consent to this reservation. I thought I had the complete salary records here but I find that I haven't. Now it may not be material when he began work or how much he got but then again it may be material. May I have a reservation that we can adduce additional evidence at a later time as to the amount of his pay and the day that [fol. 36] he worked. Now I will give you our trial memorandum and you can see that the case may be independent of how much he made and when he began to work because all his work was on the dredge. Could I have that?

The Referee: If the amount of his earnings becomes a matter of dispute, we ought to have it in his presence. I will tell you this. In the Local Office he claimed to have earned in the first quarter of 1939 the sum of $160.00 plus meals valued at $58.50; in the second quarter $275.00 plus meals valued at $58.50 and i. the third quarter $170.00 plus meals valued at $58.50.

Mr. Kullman: Did you break that down to a weekly basis, I can't just follow that where that ties in with his story.

The Referee: I can't break it down.

Mr. Kullman: The figure I have is a figure which includes board.

The Referee: At what rate did you allow board and lodging?

Mr. Kullman: Apparently I can't even give that figure without verifying with the other records that are not now available. May I suggest that we finish the case today, reserving the right to put in the employer's testimony as to the amount of pay and period worked. Set a date for an adjourned hearing and then if Your Honor decides that is not necessary why the adjourned hearing can be cancelled.

The Referee: Well, the man ought to be confronted

with your records as to whether he agrees with them or not.

[fol. 37] Mr. Kullman: I am asking for an adjourned hearing.

The Referee: Let's see how far we get on the status.

Mr. Kullman: Have I your consent to that, Mr. Rosen?

Mr. Rosen: Mr. Kullman, I want this case to be closed just as soon as possible.

Mr. Kullman: We just can't reconcile his story with the records we have. After all, this is not a small corporation. They have quite a few employees. I have no reason to doubt his testimony but I'd like to have a chance to verify it against the records. I don't think we will even dispute his story.

May I proceed with Mr. Paulson's testimony?

The Referee: Yes.

Walfred L. Paulson, having been duly sworn, testified as follows:

By the Referee:

Q. What is you- connection with the Standard Dredging Corporation?

A. I am Vice-President.

Mr. Kullman: Before the testimony, please.

(At this point an off-record conversation took place.)

The Referee: You may examine, Mr. Kullman.

[fol. 38] By Mr. Kullman:

Q. Mr. Paulson, will you state your office with respect to Standard Dredging Corporation?

A. Vice-President and Secretary.

Q. You are familiar with the general operations of the corporation?

A. I am familiar with the general operations, yes. That is to say, I am not familiar with detail operations of dredge work.

Q. What I mean is the general operations of the corporations, dredging operations, and operations of dredges and so forth.

A. Yes.

Q. General operations?
A. Yes.

Mr. Kullman: I have here two certified copies of the consolidated enrollment license of this dredge "Miami". These papers are commonly referred to as the documents of a boat. They are duly certified by the Collector of the Port of New York. May I introduce those by consent?

Mr. Rosen: No objection.

The Referee: Well, I don't see any need for the one for 1936. The one for 1939 will serve the same purpose.

Mr. Kullman: If by consent we have a concession that this dredge "Miami" was documented by deed during the period of his employment, why that will be sufficient. Frankly I am not going to try to mislead you. Notice the date of that certificate, it's April 1939. In order to show documentation over the whole period we will require both.

The Referee: We will take them both. A certificate issued by the United States of America, Department of [fol. 39] Commerce, Bureau of Marine Inspection and Navigation, entitled "Consolidated Certificate of Enrollment." The license is issued to the Standard Dredging Corporation, 80 Broad Street, New York, incorporated under the laws of the State of New Jersey referring to the Vessel called "Miami" and reciting that it was built in 1913 at Long Beach, California, of steel construction and is characterized as a dredge having one deck, one derrick, a plane head in the quarter stern. The registered length is 153 feet, her breadth 40 feet, depth 9.25 with total tonnage of 547 tons, which Certificate is issued at the Port of New York, April 8, 1936 by the Collector of Customs and certified as a true copy of the original. This is marked in evidence as Employer's Exhibit A.

Mr. Kullman: I was about to stop you from marking that.

The Referee: You will get it back.

Mr. Kullman: That happens to be a rather important record and if on the other one it made no difference I ask you to mark it on a separate piece of paper to be attached to it. One more point in your description, the official number. I don't think you know the official number of the vessel.

The Referee: I don't care for that. What difference does that make. I didn't describe everything. I just gave the

highlights according to the way I saw it. Marked in evidence as Employer's Exhibit A. Exhibit A is further characterized as being in the suction dredge service. Employer also offers in evidence a Certificate issued by the [fol. 40] United States of America, Department of Commerce, Bureau of Marine Inspection and Navigation entitled "Consolidated Certificate of Enrollment" and the license is issued to the Standard Dredging Corporation, incorporated under the laws of the State of New Jersey, concerning the vessel called "Miami", characterized as a dredge and in the suction dredge service and certifying to measurements and weights as contained in employer's Exhibit A which certificate is issued on April 27, 1939 by the Collector of Customs and certified to be a true copy of the original. This is marked in evidence as Employer's Exhibit B.

Before we go any further Mr. Kullman, will you explain to me why you say the correct title of the Company is the Standard Dredging Corporation, a New York corporation and these certificates are issued to Standard Dredging Corporation, a New Jersey Corporation.

Mr. Kullman: We will show they were chartered to a New York Corporation. With respect to an explanation of the difference in names there, on September 1, 1937 there was a merger and consolidation between the Standard Dredging Company of New Jersey and the National Dredging Company, the continuing corporation being the Standard Dredging Corporation which is the registered owner of those dredges. Now I have here a certified copy of a merger and consolidation.

[fol. 41] The Referee: You need not encumber the record with that. I will take your word as Counsel.

Mr. Kullman: I think we can agree that the legal effect, if necessary, can be proven by New Jersey Law.

The Referee: I will take your explanation as to how the Standard Dredging Corporation of New York comes into the picture.

Mr. Kullman: These dredges are chartered by the New Jersey Corporation to the New York Corporation.

The Referee: For the purpose of this hearing I want to know who is acknowledged to be the employer of this man.

Mr. Kullman: The New York Corporation.

The Referee: And the New York and the New Jersey Corporations bear exactly the same names, do they not?

Mr. Kullman: Correct. The New York Corporation is a subsidiary of the New Jersey Corporation.

The Referee: So that the hiring of this claimant and others similarly situated was under a charter arrangement whereby the New York Corporation engaged the services of a dredge owned by the New Jersey Corporation, is that correct?

Mr. Cassaretakis: When we work——

The Referee: Just a minute now. Is that correct Mr. Kullman?

Mr. Kullman: Right. One possible distinction. They chartered the dredge itself and not the services of the dredge.

[fol. 42] The Referee: In other words, it was like a lease from the New Jersey Corporation to the New York Corporation.

Mr. Kullman: They leased the boat itself.

The Referee: Go ahead.

Mr. Kullman: Can I take that to be conceded without testimony. Mr. Rosen, would you concede that without testimony. Mr. Paulson can testify to that if you wish, that the dredge is chartered by the New Jersey Corporation to the New York Corporation.

Mr. Rosen: I will take your statement as to that. Was that in effect at the time this man worked there?

Mr. Kullman: Oh yes.

Walfred L. Paulson, Vice-President recalled:

By Mr. Kullman:

Q. Mr. Paulson, I show you a copy of a letter dated November 9, 1938 and ask you if this is the carbon letter directed to the District Engineer, Army Building, Whitehall Street, New York?

A. Yes.

Mr. Kullman: I offer that in evidence.

Mr. Rosen: I have no objection.

The Referee: Carbon copy of a letter dated November 9, 1938 written by Standard Dredging Corporation to the District Engineer, New York District, 39 Whitehall Street,

requesting a permit for dredging an area described on a [fol. 43] certain map and estimating that two or three million yards are to be removed and that the material is to be deposited on the New York City Department of Parks Parkway fill as shown on the map. Marked in evidence as Employer's Exhibit C.

By Mr. Kullman:

Q. Mr. Paulson, do you know——

The Referee: Before you go any further, will you please describe who is the District Engineer, what are his duties, functions and authority. I will take your statement as Counsel, if you know.

Mr. Kullman: I am not as familiar with it as Mr. Paulson. I prefer that he testify.

Walfred L. Paulson: Whenever we take any material out of a navigable stream or bay, we have to make application to the Government engineers for our permit to take the material and file a map where the material is to be taken from.

Mr. Kullman: Now, with respect to Mr. Paulson's testimony I'd have to reserve the right to show—you see he is testifying as to matter of law of which his testimony would be incompetent—if there would be any dispute. I take it that testimony is only for the purpose of explanation.

The Referee: Put it in and we will see what it is worth.

By Mr. Kullman:

Q. I show you a mimeographed notice from the War Department, United States Engineers Office, on the back [fol. 44] of which is a map, and ask you if this was received by your office after the sending of Employer's Exhibit C?

A. Yes, it is.

Mr. Kullman: I offer it in evidence.

Mr. Rosen: I have no objection.

The Referee: Mimeographed public notice dated November 16, 1938, issued by the War Department of United States Engineers Office, 39 Whitehall Street, referring to the fact that application has been made by Standard Dredging Corporation for War Department permit to dredge in Gravesend Bay, Brooklyn, New York City and that a rough

sketch is shown on the reverse side of the sheet. Proposed dredging is to be depth of twenty-five to fifty feet below mean low water and dredge material is to be deposited shoreward of a proposed bulkhead to be constructed by the Department of Parks, City of New York, in connection with Shore Parkway. Any criticism of or protest is to be filed before November 26, 1938. Signed by H. V. Cy, Naval Corps, Engineers.

Mr. Kullman: Your Honor, I think the very highlight of that Exhibit you omitted. The purpose of the notice is to determine whether there is any objection from a navigation point.

The Referee: The paper also states that the decision as to whether or not a permit will be issued for land fill must rest primarily on the proposed work of navigation. This is marked in evidence as Employer's Exhibit D.

[fol. 45] By Mr. Kullman:

Q. I show you a letter dated December 2, 1938, from the War Department, directed to the employer and ask you if this letter was received by your Company?

A. Yes, this letter was received by our Company.

Q. Now with this letter, was there attached a document called a permit of which this is a photostatic copy?

A. Yes.

Mr. Kullman: Now I offer these as one Exhibit. I will explain the necessity for a photostatic copy. The original has been lost and this is a photostatic copy.

The Referee: I will take that. Letter from War Department, United States, Department of Engineers Office, dated December 2, 1938, addressed to Standard Dredging Corporation referring to application dated November 9, 1938 for War Department permit to dredge in Gravesend Bay and stating that a permit for that work is being issued. Signed by C. L. Hall, Colonel, Corps of Engineers. Attached thereto is War Department permit. This is marked in evidence as one Exhibit, Employer's Exhibit E.

By Mr. Kullman:

Q. Now during all the time—I withdraw that. Can you tell us about how long this job, so to speak, took?

Mr. Rosen: Which job is that?

[fol. 46] Mr. Kullman: This filling of the Belt Parkway Lane.

A. I don't know exactly, we done so many jobs. I think we were about eight months on this job.

Q. During all the time • • •

Mr. Cassaretakis: Bay Parkway, no.

The Referee: Don't interrupt.

Q. During all that time, can you say whether or not the dredge was anchored in the area shown by the map attached to Employer's Exhibit E?

A. Yes.

Mr. Rosen: What area is that?

The Referee: Will you describe it so we know what we are talking about?

Mr. Kullman: Possibly this would be sufficient.

Q. During all the time occupied in these dredging operations, was the vessel stationed in navigable water?

A. Yes.

Q. Within the area shown by the map?

A. Yes.

The Referee: Will you describe for the record what that area is?

Walfred L. Paulson: That is the area outside the pierhead line.

The Referee: What vicinity?

Walfred L. Paulson: Vicinity of Gravesend Bay.

The Referee: Is that water outside of the land known as Brooklyn, New York?

Walfred L. Paulson: Yes.

[fol. 47] The Referee: Is that within the waters of the State of New York?

Mr. Kullman: That will appear as a matter of law Your Honor. We can establish the boundaries of the State.

The Referee: It does not cross the Jersey line?

Walfred L. Paulson: To my knowledge, it does not.

The Referee: In other words, it is adjacent to the land and City and State of New York?

Walfred L. Paulson: Yes.

The Referee: Go ahead Mr. Kullman.

By Mr. Kullman:

Q. Now I show you a letter dated January 4th or rather a photostat of a letter dated January 4, 1937, from the United States Treasury Department and directed to Mr. Clarence W. DeKnight. Now first can you tell us who is Mr. DeKnight?

A. He is our Attorney in Washington, D. C.

Q. Did he send you the original of that letter or the original of which that is a photostat?

A. I can't say as to whether I have the original letter. I have the photostat of the original, this photostat.

Mr. Kullman: Will you accept that as sufficient foundation of proof? We can get you the original.

The Referee: There will be no quarrel with its being a photostatic copy. I will take it for what it is worth but I tell you at the outset I am not bound by any ex parte [fol. 48] decision of any agency, Federal or State or otherwise. I will decide this case on the evidence in this case rather than ex parte decisions of other agencies. Marked in evidence as Employer's Exhibit F. Employer's Exhibit F is a photostatic copy of a letter of the Treasury Department, Office of the Commissioner of Internal Revenue, dated January 4, 1937, addressed to a Mr. Clarence W. DeKnight, Washington, D. C. and stating in effect that the Treasury Department now holds that dredges intended and adapted for navigation and transportation by water, of their crews, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstructions in channels and harbors in aid of navigation and commerce, are vessels within the meaning of Section 811 and Section 907 of the Social Security Act and that where such dredges are operated by the Standard Dredging Company of New York in navigable waters of the United States and the services performed by the Officers and Members of the Crew, come within the exempting provisions of Section 907, and wages payable to employees on account of such service, need not be included in the computation of wages for the purpose of determining employer's taxes. If such dredges are documented under the laws of the United States, the service and members of the crew, come within the exempting provisions of Section 811 of the Act.

Mr. Rosen: I wish the record to show that it is not binding upon the Division of Placement and Unemployment [fol. 49] Insurance of the State of New York.

The Referee: Well, that is your argument and we will take that at the proper time. Go ahead Mr. Kullman. Are you through with this gentleman?

Mr. Rosen: I just wanted to ask Mr. Paulson a few questions.

The Referee: Go ahead.

By Mr. Rosen:

Q. Where is the principal place of business of the Standard Dredging Corporation, the New York Corporation, the employer in this proceeding?

A. 80 Broad Street.

Q. New York City?

A. Yes.

Q. Does it have any other place of business?

A. Yes, it has several places of business.

Q. Where are they located?

A. New Orleans, Louisiana; Galveston, Texas office, in Los Angeles.

Q. That is, the New York Corporation has those places of business?

A. No, wait a minute. The New York Corporation has an office in Galveston, Texas and Louisiana and Texas.

Q. In the State of New York, has it any other places of business?

A. No. I got mixed up with our New Jersey Corporation.

Q. Mr. Paulson, has the New York Corporation filed franchise tax returns with the State of New York and paid franchise taxes to the State of New York?

A. It has.

Q. Has it done so for the years——

Mr. Kullman: For all years.

[fol. 50] Q. When was the New York State Corporation formed? When was it formed?

A. I believe in May 1938.

Q. May 1938, is that right?

A. I believe that is correct, I believe that's the date. I believe so.

Q. And for 1938, 1939 and 1940 it has filed franchise tax returns and paid franchise taxes to the State of New York?

A. Yes.

Q. When it filed—that is all.

Mr. Kullman: I'd like to ask a few more questions. This is more in the nature of direct rather than redirect.

The Referee: Go right ahead. We don't draw any distinctions.

By Mr. Kullman:

Q. First of all, do you know where the dredge Miami is now?

A. The dredge Miami is at present located at Tampa, Florida.

Q. It is a sea-going dredge then?

A. It is a sea-going dredge.

Q. Will you state in a general way the various places that the dredge Miami has been?

A. The dredge Miami after finishing Belt Parkway job at Gravesend Bay, after that, we towed that dredge to Jacksonville, Florida and we done a contract there on the naval base there and within the past months we towed the dredge by tugboat to Tampa, in Florida.

Q. When that dredge goes from this State of Florida, about how many men would she have on board?

A. When she goes out to sea, we generally have about a half a crew, about twenty-five men, about twenty-five to thirty.

[fol. 51] Q. Now Mr. Cassaretakis, has testified that he did work in the kitchen?

A. He washed dishes, takes care of linen and a few other things.

Q. Now when the dredge Miami left from New York to Florida, did it have a man on board who did substantially the same duties as Mr. Cassaretakis?

A. Oh yes.

The Referee: That would be very interesting but that wouldn't be controlling as to what took place when this claimant worked on board the vessel. It may have been changed, that is, after he left. I don't know. I think Counselor you ought to confine yourself to the period of his employment. When this claimant worked there what took place.

Mr. Kullman: The nature of his duties would appear more as a matter of law than a question of fact.

The Referee: There is no dispute he was a dishwasher and waiter.

Mr. Kullman: General cook's helper.

The Referee: There is no dispute as to that. I think we all agree on that.

By the Referee:

Q. Mr. Paulson, has the dredge Miami any means of self-propulsion?

A. None other than the spuds. When that dredge is operating it has a means of propelling itself by lifting the spuds up and down and walking along.

Q. How is it taken from place to place?

A. It is generally taken by tugboat.

Q. It is tugged or towed by a boat having propulsion [fol. 52] power?

A. We have a steamer also that tows dredge boats and carries the auxiliary equipment.

Q. When you say by means of spuds, isn't it a fact that you mean by means of lines the dredge is shifted from place to place in and about its dredging operations?

A. Means of lines and spuds.

Q. These spuds are attached to what?

A. Attached to the dredge.

Q. And what leverage is exercised to make the boat move from spot to spot?

A. These spuds are lifted up and down by pulleys.

Q. When you say that this is a seagoing dredge, do you mean to imply that it carries cargo or passengers when going to sea?

A. Oh no.

Q. Is it a fact that the work of the Miami is confined to dredging operations?

A. Dredging operations pumped through pipelines.

Q. These pipelines rest on pontoons?

A. There is a legal opinion that pumping through pipelines is transportation.

Q. I am asking you, do these pipelines rest on pontoons when the dredge is operating on a particular spot?

A. Yes.

Q. Is it a fact that the material under the surface of the water is pumped up by suction pumps from beneath the surface through the pipelines on to the shore?

A. That's correct. Sometimes we have quite a lengthy pipeline ashore besides the pontoons.

Q. Well, the pipeline may run from dredge to shore without the aid of pontoons?

A. Yes, without the aid of pontoons right on the land.

Q. Now was the Miami engaged in the work of deepening or removing obstructions from channels or harbors at the [fol. 53] time this claimant worked aboard it?

Mr. Kullman: I think he already testified to the fact that this was dredging for fill for the Belt Parkway. We will stipulate that fact, if you wish?

The Referee: Your Employer's Exhibit F is based upon a holding of the Treasury Department, Commissioner of Internal Revenue, that dredges adapted for navigation and transportation by water of their crews, etc., in carrying on the work of deepening and removing obstructions in channels and harbors in aid of navigation and commerce are vessels within the meaning of the Social Security Act.

Mr. Kullman: You mean you draw a distinction whether the primary purpose is deepening a channel or whether there is a supplementary purpose in the use of the dredge?

The Referee: I have not drawn that distinction but the Appeal Board has drawn that distinction; that there is a difference between the work which is in the category of strictly in aid of navigation and that which is in the category of construction on land.

By the Referee:

Q. Now Mr. Paulson, will you answer to the best of your ability. Was the work of the dredge Miami in aid of navigation for the purpose of deepening, widening, a channel or harbor at the time this claimant worked aboard the dredge?

[fol. 54] Mr. Kullman: Just a minute Your Honor. I will have to object to what you say in aid of navigation. I think that is a conclusion of law as to what is in aid of navigation.

The Referee: I think you are justified in making that objection and I will reframe the question.

Q. Will you describe in your own words Mr. Paulson, what the work was of this dredge Miami during the early part of 1939 and continuing for eight months as you testified?

A. Well, we were digging material to make that fill.

Q. Will you give us a layman's definition of fill. What do you mean by that?

A. To make the fill behind the bulkhead to make a road.

Q. In other words putting in into layman's vernacular, they were building a roadway on land called Belt Parkway?

A. That's right.

Q. And they pieced out the irregularities of the land by filling in with material sucked from underneath the surface of the water, in the vicinity of that particular roadway, am I correct?

A. Yes. The City of New York in drawing up that contract figured they could get their material right from the Bay.

Q. That was what is known now as Belt Parkway, constructed by the Department of Parks in the City of New York?

A. Right.

Q. Territorially, it is located in Brooklyn for the most part, is it not?

A. Yes.

Q. Am I correct in saying that the purpose of this dredge work on this particular occasion was to supplement the [fol. 55] material on land so as to build or construct a roadway as part of this Belt Parkway?

Mr. Kullman: Again, the purpose of the operation might become a question of law. Would you restrict yourself to one of the purposes?

The Referee: I am going by your own Exhibits Mr. Kullman. Your own Exhibits say that the purpose of the permit is to remove a certain quantity of yards in the deposit of material on the Department of parks fill. Now I am assuming that was the purpose. It there are any other purposes I will be glad to take testimony on that.

Mr. Kullman: That's all right.

By the Referee:

Q. Are we clear on that Mr. Paulson, that the purpose of the original contract that you had with the authorities. I assume that was with the City of New York?

A. Yes.

Q. Was to obtain material from underneath the surface of the water to fill in the land at a particular point, to create a roadway, is that right?

A. That's correct.

Q. And when you made application to the War Department, that was the purpose of your operation, by the letter which is Employer's Exhibit C and that was the purpose as outlined in the permit given to you as in Employer's Exhibit E, is that right?

A. Yes.

Q. What I want to make clear so that we can define the issue in this case, is that whatever the status of the vessel [fol. 56] may be in the matter of law, in this particular instance, am I correct in saying that it was an operation concerned with the building of a roadway on land, is that right?

A. If the operation concerned the filling of a roadway on land by suction dredging process and obtaining material from the bottom of the Bay and depositing this material behind the bulkhead through suction pipes.

Q. I don't want you to misunderstand my question. I want you to tell me if there were any other purposes of this operation in which the Miami was engaged at this particular time?

A. Well, not that I know of except Moses thought it would be nice to clean the hole out there in Gravesend Bay. The water is very shallow there. Coal barges used to come in there and go ashore. He wanted it for yachts.

Q. When you say Moses, you mean Commissioner Moses, the Park Commissioner?

A. Yes.

Q. What did the contract between the Standard Dredging Corporation and the City of New York say, as to what the purpose of the operation was?

A. I don't know as to that.

Q. Was the primary purpose to create a yacht basin or build a roadway?

A. The primary purpose was to build a roadway.

Q. In line with this Employer's Exhibit F, I want to know if any of the work done by the Miami in this particular case, was in connection with the deepening and removing of obstructions from a channel or harbor?

A. Yes, it was removing material from a narbor, if you call Gravesend Bay a harbor.

Q. Was it for the purpose of deepening the harbor and channel?

A. No answer.

[fol. 57] Mr. Kullman: Just a minute. Your Honor. Again I don't think it is important but I think if he answers your question, he would be testifying as to what is a question of law. That is a question of law. The Exhibits indicate the nature of the precautions taken by the Federal Government. They indicate that the sole interest of the Federal Government as to whatever is done on navigable water is the effect that it will have on navigation.

The Referee: That is a protective matter.

Mr. Kullman: I don't think so.

The Referee: As you say, you can leave that for either argument or proof by law. Let me tell you the purpose of my questioning. You have put into evidence a ruling by the Treasury Department, marked Employer's Exhibit F and that states very succinctly that a ruling is being made that dredges, intended and adapted for navigation and transportation by water of their crews, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstructions from channels, and harbors, in aid of navigation and commerce, are vessels within the meaning of the Social Security Act. I assume you are relying on that. I want to know whether any of the work done by the Miami on this particular occasion was in connection with the deepening and removing of obstructions from channels and harbors in aid of navigation and commerce.

[fol. 58] Mr. Kullman: May I point out that the removal of sand from water, is a deepening of which you are required to take judicial knowledge. You can't remove a few million cubic yards of sand from the Bay without deepening the water.

The Referee: We are concerned with the primary purpose. If the primary purpose is to build a roadway, the secondary purpose becomes the deepening of the surface

under the water because you are excavating and removing material.

Mr. Kullman: The very purpose of that is a maritime purpose.

The Referee: Was the contract between Standard Dredging Corporation and the City of New York for the purpose of deepening the waters in Gravesend Bay?

Mr. Kullmen: From the point of view of the City, the City was not interested in the navigable waters, that is the concern of the Federal Government.

The Referee: Now I don't want to take the position of Counsel here. Let's not fence. I want to make the thing clear in my own mind, and that's this. Is it not a fact from what Mr. Paulson has already stated, that the primary purpose of the contract between Standard Dredging Corporation and the City of New York was to obtain fill from the waters of Gravesend Bay and deposit that material on land to make a roadway?

Mr. Kullman: Just a minute, Your Honor. With respect [fol. 59] to that I think the testimony, if it states that, is a little inaccurate.

The map shows an area to be filled in, which prior to the filling in was water, varying from twelve feet to five feet. So this was filling in the edge of the sea to make it land, much more so than it was to increase the height of the land, that is, the making of land out of what was formerly the sea.

The Referee: Although there is no testimony on that I will accept your testimony that that is a fact.

Mr. Kullman: The Exhibit shows it as a matter of fact.

The Referee: Now let me continue with a few more questions and then Counsel can inquire.

MR. PAULSON RECALLED

By the Referee:

Q. Who was in charge of this dredge, Mr. Paulson?

A. We had a superintendent in charge of the operations by the name of Guy W. Sackett.

Q. Was there a captain aboard the dredge?

A. Besides Mr. Sackett, there was a Captain aboard the dredge.

Q. Who had charge of the operations?

A. Mr. Sackett had entire charge of the operations. Under him was the Captain of the dredge and under the Captain was the mates and operators.

Q. Will you describe the positions held by the various men working aboard the dredge? After the Superintendent [fol. 60] and Captain came which jobs?

A. The men that come next are the operators, levermen.

Q. They operate the machinery?

A. Yes.

Q. Who else?

A. Then the mates.

Q. What work did the mates do?

A. They boss the sailors around.

Q. When you say sailors, what work in the category of sailors do these men do?

A. The sailors work on board the dredge.

Q. I want you to describe to me what work they actually did?

A. When the dredge is operated they have various duties to do.

Q. Are the sailors the levermen?

A. The levermen are generally sailors, generally men that come up from the deck and go up to leverman.

Q. Start as a deckhand?

A. Yes.

Q. What work does a deckhand do?

A. Ordinary sailor working on board.

Q. I have never been aboard a dredge. You will have to describe it for me. When you say ordinary work, you have to describe it for me?

A. They have varied duties. I can't describe it myself as I am not a dredge man.

Q. You have been aboard a dredge, you have seen it operate?

A. I have seen the deckhand working there lines and different things.

Mr. Kullman: Would you, Your Honor, want detailed testimony as to dredging operations?

The Referee: I think we ought to know what these men do. When you label a man a mate or a sailor, that has a maritime connotation. I think we ought to have an elabora- [fol. 61] tion. It may be these are misnomers. It may be

they are correctly named. We have had barge cases where the one man aboard is the boat, the Captain, the Crew and yet, he is called the barge captain. He is in the category of an ordinary laborer and yet he is dignified. I want to have an exact description of the work done by these so-called mates and dredge men.

Walfred L. Paulson: I will have to get you a dredge man.

The Referee: You had better have one here the next time.

By the Referee:

Q. How many decks has this dredge?

A. One deck, the main deck and sleeping deck.

Mr. Kullman: That makes two.

Walfred L. Paulson: Yes, two decks.

Q. Does this dredge ever carry passengers or cargo?

A. No. As a matter of fact the crew also consists of the engineering part of the vessel. The chief engineer has generally three assistants and the oilers and firemen.

Q. What do they operate?

A. They operate the boilers and operate also the machinery.

Q. Which machinery do you refer to?

A. The machinery for moving the dredge to and fro, the machinery that moves to and fro.

Q. You don't mean in navigating the dredge?

A. In moving the vessel to and fro.

Q. When you move the vessel to and fro, you move it by spuds or lines?

A. Yes, but that takes machinery, and they work on that you see.

[fol. 62] Q. Is there any machinery aboard that would enable the dredge to operate under its own power in going from place to place, like any seagoing or rivergoing vessel?

A. No, you see they are generally towed by going, by a tugboat, when they are moved from place to place.

Mr. Rosen: A few questions.

The Referee: Mr. Rosen.

By Mr. Rosen:

Q. Mr. Paulson, Mr. Cassaretakis has testified that he was employed from approximately the beginning of Feb-

ruary until approximately the end of August 1939, on this boat Miami, on this dredge Miami. During this period this dredge Miami was engaged in the operations that you just finished testifying about, that is, in the neighborhood of Brooklyn, adjacent to land there in Gravesend Bay, excepting possibly for the period it was in drydock, now is that correct?

A. I don't know just when he started to work. He said something about starting to work over in Bayonne before she moved to Gravesend Bay.

Q. Can you tell us whether the work in Gravesend Bay extended at least from the beginning of February 1939 until about, say the middle of August 1939?

A. I can't tell exactly what is the period. To the best of my—my guess is six or seven months.

Q. Starting when?

A. No answer.

Mr. Rosen: Mr. Kullman, can you have that straightened out at the next hearing?

[fol. 63] Walfred L. Paulson: We operate several dredge boats; I can't tell just when.

By Mr. Rosen:

Q. Has the Miami what is known as a home port?

A. Yes.

Q. Where is that?

A. New York.

Q. Is it tied up to a pier or is there any particular place where it is home?

A. In a home port in New York? If you notice that document, it has a designation of home port.

Q. The document is made by the Bureau of Internal Revenue at the Port of New York. Is the Miami docked in New York when it isn't in use?

A. She is docked wherever we just happen to have a job and lay up. She will probably never come back to New York. She is in the south. She is down in Tampa, Florida now and will be down in the south. We move these dredges around from place to place.

Q. Where was that dredge in January of 1939?

A. I might explain that we have no regular terminal in the State of New York where we lay up our dredges.

Q. Where was it in January of 1939?

Mr. Kullman: I can supply that if you want it. I will have it.

Mr. Rosen: You will get it?

Mr. Kullman: Yes, if you want it, yes.

Mr. Rosen: For the whole year 1939 and also supply us the name of that drydock that Mr. Cassaretakis stated, which was laid up somewhere in Brooklyn. The name of the drydock or pier?

Mr. Kullman: All right, yes.

[fol. 64] By Mr. Rosen:

Q. Mr. Paulson, is the New York Corporation, the Standard Dredging Corporation, a covered employer within the meaning of the New York State Unemployment Insurance Law, regardless of Mr. Cassaretakis? In other words, have you other employees for which you have paid contributions and have filed reports under our law?

A. Yes, we have the men working ashore.

Q. Now under this Charter, between the Jersey Corporation and the New York Corporation, affecting this dredge Miami, as I understand it, correct me if I'm wrong, the New York State Corporation is responsible for the operations and control of that dredge during the life of that Charter, is that correct?

A. Yes, correct.

Q. The personnel on the dredge during the period in question was paid by the New York State Corporation?

A. Yes.

Mr. Rosen: That is all.

The Referee: Is there anything further?

Mr. Kullman: That is all.

The Referee: Case adjourned for further testimony.

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Certified to be a True and Correct Copy of Minutes
Abraham Weinstein, Hearing Stenographer, Abraham Weinstein.

Transcribed 11/13/40.
Cassaretakis 9/5/40.

[fol. 65] BEFORE DEPARTMENT OF LABOR—UNEMPLOYMENT INSURANCE REFEREES' UNIT

Hearing before Referee—September 11, 1940

Present Louis J. Naftalison, Referee. William Newrock, Reporter.

APPEARANCES:

Mike Cassaretakis, claimant.
Standard Dredging Corporation, Walfred L. Paulson, Vice President and Secretary.
George F. Gee, dredge captain, witness.
Ray Pippitt, clerk, witness.
Kirlin, Campbell, Hickox, Keating & McGrann, Esquires, by H. Maurice Fridlund, Esq., and Roy T. Parker, Esq., of counsel; for Standard Dredging Corporation.
Division of Placement and Unemployment Insurance, Legal Bureau; by Harry I. Rosen, Esq.

[fol. 66] THE CASE WAS DULY CALLED. DISCUSSION OFF THE RECORD

MIKE CASSARETAKIS, claimant, having been previously sworn is recalled and testtifies as follows:

By the Referee:

Q. When you filed an application for a hearing in the local office, you signed a statement which said, "I was employed as a waiter on a dredge (stationary) clearing the channels at the Bedloes and Fort Hamilton Vicinity on a contract job for the United States Government". Now where did you get the information that this was a United States Government job?

A. Well, from the dredge, inside.

Q. From the what?

A. From the captain and chief engineer and everybody else.

Q. Well, do you know it was a United States Government Job or a city government job?

A. No, that is state job. Altogether.

Q. Which is it, state, city, or United States Government, if you know?

A. Same thing, I guess.

Q. To you it's the same thing.

A. Well, state job and United States Government job is all the same.

Q. You have no personal knowledge as to what kind of a job it was, for which government?

A. Of course I know.

Q. You only know what they told you?

A. I know myself, that job was run by La Guardia or Lehman, together—Bay Parkway.

[fol. 67] Q. Did you see the way the dredge did the work?

A. Of course.

Q. And what did you see the dredge do?

A. Just dig the bottom of the water, pump all kinds sand and stones, everything that you get down there, to fill up the bad lands.

Q. The bad lands?

A. Yes.

Q. And where was this land situated?

A. From the Bay Ridge—Near the Bay Ridge to the other place—near Coney Island.

Q. And that is in Brooklyn, New York?

A. Of course.

Q. All right, and if the evidence here shows that this was a city job you have no quarrel with that as distinguished from a United States Government Job, have you?

A. No, I don't know, I only know when I get this job—I told you I was in employment office in Fourteenth street—as soon as I get this job I report there, he says, and soon you finish this job you report there. I don't know government job I just want the law.

Q. Is there anything else you want to tell me that you didn't tell me at the last hearing?

A. Well, last hearing I forget to told you it. When they hired me there he told me, the steward told me, "You pay dollar a day, your wages twenty-six dollars a week, but the company keep one dollar a day for your meals and everything else and nineteen dollars be clean for you." He told me that and he told me, if you satisfactory, I don't have to claim nothing.

Q. When we get the proof of your earnings from the Standard Dredging Company's representative here, I'll come back to you and check if its correct.
A. Yes.

[fol. 68] DISCUSSION OFF THE RECORD

By the Referee:

Q. Outside of that, anything else you want to tell me?
A. No.

GEORGE F. GEE, witness, having first been duly sworn, testified as follows:

By the Referee:

Q. What connection have you with the Standard Dredging Company?
A. I act as dredge captain in various parts of the work.
Q. Are you acquainted with the actions of the dredge called "Miami"?
A. Yes.
Q. And do you know about this particular city job in connection with the filling in of the land——
A. At Gravesend Bay.
Q. —at Gravesend Bay?
A. Yes.

Examination by Mr. Fridlund:

Q. Mr. Gee, will you tell us something about the—how the dredge "Miami" was manned, how many men, what is it customary——
A. The dredge "Miami"?

The Referee: Wait a minute, may I suggest you give him one question at a time? You've asked three. Break it up. Try one at a time.

Q. Well—well, how many men do you customarily have in the crew "Miami"?
[fol. 69] A. From forty-two to fifty. That includes the three crews for the three different shifts.

Q. How is that crew made up?

A. That consists of a deck captain—deck department and the engine room department. The captain in charge of the dredge is substituted by a dredge captain and dredge mate and then there are the three operators who operate the dredge to do the shifting, and under the mate there is deck-hands. Now, the engine room consists of chief engineer, first and second and first assistant engineer, fireman, oilers and wipers. The chief engineer has jurisdiction of the engine department, captain looks after the outside work.

Q. Now, how about——

A. And the commissary consists of a cook, a steward, and a helper—cook's helper—and they usually look after the commissary and do the cooking and janitor work and making up the beds and keeping the rooms clean. That is only aboard the dredge.

Q. Are all of the crew, that you mentioned, aboard the dredge under the orders of the captain?

A. Direct orders of captain.

Q. Or——

A. Or the deck captain.

Q. Now, in addition to the crew aboard the dredge, do you also have a shore crew?

A. The shore crew consists of—solely on the size of the contract and the job and usually from fifty to a hundred men. They are made up entirely of what we call pipemen—laborers—laborers, and they usually have a dump foreman. Sometimes the work spreads so far apart that we have an assistant foreman with a dump foreman, and those men do shore work entirely at all times.

Q. Did I understand you to say they are under the direction of whom?

[fol. 70] A. Well, the captain of the dredge. It's necessary for him, at times, to come out and give orders to the dump foreman in regard to the grading. There are times when the fill may be getting too high above the engineer's grading and the captain, he is responsible to know for the company, and there is times when he has to go out and make his rounds on the first, and he does give orders to the dump foreman—where to change and put the pipes—but aside from that under his direct orders are the shore crew men.

Q. Yes.

A. Usually some times the captain—the superintendent or civil engineer as we call them, looks after grade and cooperates with the engineer and state engineer, whatever contract we may be on.

Q. And what are the duties of dump foreman?

A. To see that the pipelines are laid and put in the place either by the dredge captain or the superintendent. When I say the superintendent, he is merely the civil engineer.

Q. Does he also boss the shore crews—laborers?

A. Sometimes, when the dredge captain is on the dredge.

Q. Is the shore crew sharply differentiated in any way from the dredge crew?

A. Well, I would say they are. I would say that as long as I have worked for the company I was under orders not to allow any of the shore crew on the dredge.

Q. Are those your own orders or the present regulations of the company?

A. Usually the regulations of the company. They have no business on the dredge. Their work is entirely ashore and it's purposely because they come on there. They are liable to pick up tools and go into the commissary and [fol. 71] bother the cook and perhaps take coffee and food. In other words they haven't any purpose on the dredge.

Q. Mr. Gee, some testimony was given here last time to the effect that some of the shore men came aboard the dredge to eat. You know whether that is so?

A. Well, if they do they might sneak over and get coffee or something like that, but it's against the company's orders for any shore men to come within the commissary.

Q. Now are there any other men, that is other than the dredge crew, who were affected aboard the dredge?

A. Who ate aboard the dredge?

Q. Yes.

A. Engineering.

Q. What engineering?

A. Civil.

Q. City or company?

A. Army I would say. Army or state.

Q. Yes?

A. And usually sometimes the officers from the company from our New York office, they come aboard for inspection,

and launchmen—we have small launches that wait on the dredges, that bring the barges back and forth—and those launches are too small to carry a cook or do any cooking and those men eat on the dredge.

Q. I see, now, at the time of the Gravesend Bay contract, where was the dredge operated?

A. Well, I would say it was operating on the east side of the main channel. I would call it the east side. Due east of the main channel—termed as the main ship channel from New York Bay to the Narrows. That is the entrance of the Atlantic Ocean.

Q. Was that within the area prescribed by the army engineers?

A. Army engineers, yes, sir.

Q. Now, when the dredge picked up fill from the excavated area——

A. Yes.

[fol. 72] Q. What did it do with it then?

A. Why it pumped it ashore. In the beginning of the work we started to put the material excavated by the dredge into the water below mean low water and then had it raised to another elevation set by the state engineer or the army engineer. That is it was deposited inside of the low water line.

Q. Now, in the course of these operations at the excavated area, was it necessary to remove any obstruction?

A. Well, there were stones and boulders and things like that mixed into the sand. Whenever anything like that happened, that I know of, they went outside of lines designated by the army engineers.

Q. Did you——

A. It was sand material.

Q. Did you operate in one particular portion of the area or anywhere?

A. The operations of the hydraulic dredge required that you keep moving ahead and free from side to side, see.

Q. How long did the operations at Gravesend Bay last?

A. Approximately—of course as I say, I was not in charge of the work at all times——

Q. I see.

A. —but the dredge—to the best of my knowledge—I believe—to the best of my knowledge—outside of the company records—I think it was somewhere in March—February,

March, April—somewhere in March, I believe, and then I think they finished somewhere in August.

Q. I see.

A. Now, I'm not quite sure.

Q. Now, after the Gravesend Bay contract was finished in August, then what happened to the dredge?

A. The dredge was towed off of the site of work. In other words, from the area designated by the army engineers to excavate, it was taken from there to the foot of twenty-fifth [fol. 73] street dock, the name of that is Coney Island. I believe that is the street.

Q. And there——

A. It was tied in—well it laid in twenty-two feet of water under the dredge. Water went up to float the dredge.

Q. Did you still maintain the crew on board?

A. No, they kept a skeleton crew.

Q. Skeleton crew?

A. They were members of the crew.

Mr. Fridlund: I think that is all I have.

Cross-examination.

By Mr. Rosen:

Q. When this dredge was operating in Gravesend Bay——

A. Yes.

Q. —how far from the New York shore was it?

A. From the New York—from the Brooklyn side?

Q. From the Brooklyn side?

A. Well, now——

Q. Approximately.

A. I never measured it. I would say that dredge was in the neighborhood of sixteen-hundred—in the neighborhood of sixteen hundred to two thousand feet off of the shore line. Now, of course those are approximately the figures. Judging the distance.

Q. During the course of your work? During the course of the dredging?

A. Yes, sir.

Q. Was the work inspected by New York City engineers?

A. Of course the work on the shore—I don't know, I wasn't there at all times but I did see inspectors around there.

Q. Do you know whether they——

A. Assuming that they were usually that is the procedure.

Q. Mr. Gee, what is meant by rip-rap?

[fol. 74] The Referee: What is the word?

Mr. Rosen: Riprap.

A. Riprap is a term—a practical term from quarries. In other words, riprap is above what they call one and two man stone. Riprap is a stone that is too large for one or two men to pick up. Now riprap would usually run from one thousand to a—thousand pounds—to a ton.

Q. I see. Mr. Gee, how long was the dredge laid up at the Coney Island dock?

A. Those figures I haven't got. I never kept records of it but I did move the dredge from Coney Island to dock myself, I was assigned to do that. The dredge I believe tied up sometime in August and I moved the dredge on September 15. In other words I had orders to move the dredge on the first of September down to a safe harbor at the foot of Clinton Street, Brooklyn. It was hazardous where it was laying.

Q. How did you move it?

A. With tow boats. The Moran Towing Company.

Q. And when you moved the dredge from the scene of its operations in Gravesend Bay to Coney Island, how did you move it?

A. I believe I wasn't there, but I believe it was moved by our own small tow boats. It was a distance of not more than three thousand feet.

Q. And when the dredge moved from place to place in the course of its operations was the use of a tow boat necessary?

A. No, you mean off the area of the excavation.

Q. Yes.

A. No, the dredge maneuvered by means of the anchors. There was an anchor on the port end side that is set out on right angles for fleeting and then there is a spud in the [fol. 75] bank just like my fingers, one spud is up at all times and the dredge works around on that spud and when the dredge wants to set ahead they leave one spud down, take the other one up.

Q. You mean the tide will move it around?

DISCUSSION OFF THE RECORD

The Referee: Photograph of the dredge "Miami" is marked in evidence as employer's exhibit G. Employer's exhibit G—strike that out——Now will you indicate on employer's exhibit G—this photograph—by a pencil mark what is indicated to be the spud you just spoke of. Put it out here (indicating). Is that the same thing? Are they identical?

Mr. Fridlund: I believe so.

The Referee: Go ahead.

A. Now, the operation of a dredge, when the dredge wants to move ahead you see by—one of those spuds are lifted. You understand?

Q. Yes.

A. The other one is down. Now then they are sweeping the dredge on that one spud. Well, when they do see then they drop the opposite spud—they hold the opposite spud and then they swing the dredge around and they drop the spud. Then they pick up the other spud and swing the dredge in the opposite direction. In other words, this is the motion (indicating). Like that.

Q. Mr. Gee, what swings the dredge?

A. The engine in her.

Q. I see.

A. Attached to these cables are the anchors.

[fol. 76] Q. I see.

A. And when they want to swing one way they slack——

Mr. Fridlund: In other words, Mr. Gee, is it correct that on the job the dredge moves from place to place as operations are required, under her own power?

The Referee: When you say power, you mean motive power or the power——

DISCUSSION OFF THE RECORD

The Referee: Or the power of a fulcrum?

Mr. Fridlund: Well motive power applied from the engines on board the vessel——

DISCUSSION OFF THE RECORD

A. Going back to your question, the dredge moves by its own power for a distance of—at any distance on a straight

cut. When the dredge has to come back—often times in our operations over the same area—Now I'm not getting away from that—if its got any distance to come back in quick time we usually pick up the anchors and our own tug boats bring it back. Its our own tug boats that bring it back.

The Referee: What I want to know is, when you say "its own power" it hasn't got its own power.

Mr. Gee: It's not a propelled dredge.

The Referee: And before we leave this picture, I want you to mark it up some more. For my benefit will you indi-
[fol. 77] cate the pipe lines by an arrow and the word pipeline? And what is the diameter of this pipeline?

Mr. Gee: That's 27 inches.

The Referee: And it's made of what composition?

Mr. Gee: Iron and steel.

The Referee: And it's riveted at various sections?

Mr. Gee: Welded and——

The Referee: And those pipelines rest on pontoons between the derrick and the shore, is that right?

Mr. Gee: Yes.

The Referee: And will you indicate to me what this is?

Mr. Gee: That is a frame.

The Referee: What does that mean in non-technical language?

Mr. Gee: You'd call it a stationary press derrick.

The Referee: And what is suspended from this press derrick?

Mr. Gee: That is a ladder coming down, here it's on the water, of course. We call this the ladder falls.

The Referee: The ladder what?

Mr. Gee: Falls f-a-l-l-s.

The Referee: And what does that, that you described as the ladder falls which goes into the water, do?

Mr. Gee: That is the flexible contrivance that has the suction pipe bolted on to it and it acts on a swivel or a ball joint, like your wrist, and that has a suction pipe attached to it on the bottom.

[fol. 78] The Referee: In other words, the suction pipe is suspended underneath the surface of the water by means of this falls ladder?

Mr. Gee: That's correct, and that permits our dredge to make different depths.

The Referee: And does it—any of the suction machinery show on this picture?

Mr. Gee: No, sir, it doesn't.

The Referee: Is that underneath the surface of the water?

Mr. Gee: It's in the bottom of the dredge.

The Referee: I see. Is there anything else in this picture that you think you ought to label?

Mr. Gee: How about these swinging wires that swing the dredge from place to place?

The Referee: Mark it, will you please?

Mr. Gee: Attached to anchor.

The Referee: Now does this photograph show any of the lines running from the dredge to the shore? Outside of the pipeline.

Mr. Gee: That's all.

The Referee: Are there any cables?

Mr. Gee: Not from the dredge, no, sir.

The Referee: Are there any electric cables?

Mr. Gee: No, sir.

The Referee: How is power generated aboard the dredge?

Mr. Gee: By steam and boilers.

The Referee: Any water lines between the dredge and the——

Mr. Gee: No, sir.

[fol. 79] The Referee: —and the shore?

Mr. Gee: Our water is brought in small barges.

Q. Mr. Gee, this picture, exhibit G, was that taken while the dredge was actually engaged in its work under the contract which is the subject matter of this proceeding?

A. Well, it hasn't—I couldn't say that myself, I'm sent from various plants, from one to the other, but I recognize that dredge as the dredge "Miami". There is nothing to indicate on the picture, but it is the company's usual procedure to take pictures of all our work under the operations on and before and after.

Q. Now Mr. Gee, the dredge——

A. Yes.

Q. —was engaged at all times in the area of excavation, as provided for in the contract, between the Standard Dredging Corporation and New York City?

A. Positively.

Q. Is that right?
A. Yes.

Mr. Rosen: I have no further questions. Mr. Fridlund, can you tell me for the record whether this is a picture of the dredge while it was actually in operation?

Mr. Paulson: This picture was taken at Jacksonville, while it was operating at Jacksonville, Florida.

Examination by the Referee:

Q. Mr. Gee, there was some testimony taken here last time that a superintendent by the name of Sackett was on this particular job. Do you know the gentleman?
A. Yes.
Q. Was he in complete charge of the dredging operations? [fol. 80] A. Not at all times. He was assigned by the company as—I would call it—general superintendent on the entire contract and he would naturally be over the dredge captain.
Q. What was the relationship between the dredge captain and Sackett?
A. There wasn't any relationship.
Q. Did he have supervisory powers over the dredge company——
A. Yes, so far as I know.
Q. And did he have supervisory powers over the land crew?
A. Yes.
Q. One——
A. And the engineers in charge.
Q. One other question along these lines. When the dredge was removed from Gravesend Bay about three thousand yards or feet?
A. About four thousand feet.
Q. About four thousand feet to Coney Island. You say a skeleton crew was kept aboard?
A. Yes.
Q. How many in a skeleton crew.
A. Well, usually eight in the skeleton crew. Eight to ten.
Q. Was there a cook kept aboard to provide meals for these men?
A. Those men, at that time they wanted—they didn't want to pay their dollar a day to the company, they thought

that the lunchroom was right nearby on the street and they preferred to go there and eat.

Q. Now explain to me about this dollar a day. The claimant tried to say something about it but I didn't get the full import of it?

A. Well, usually on account of the work, the dredge being out in the water at all times, it's inconvenient for the men to get back and forth and a lot of men live so far away the company finds it necessary to give the men a place to sleep aboard, clean rooms with water and everything they [fol. 81] want, and so forth, and the company usually hires a cook, pays the cook so much a month or a week or whatever it may be, with a helper. Then the company deducts one dollar a day from each and every member of the crew who are supposed to eat aboard the dredge.

Q. In other words the men pay for their meals?

A. Yes.

Q. And the company does not furnish the meals gratis, is that right?

A. Well, they furnish the meals.

Q. Well, if they charge them a dollar a day, the men are virtually paying for it?

A. That's part of their wages. Yes, I believe so. They don't give the food to them.

Q. And——

Discussion off the Record.

Q. Was the dredge "Miami" in operation prior to March of 1939?

A. During that year?

Q. During that year, yes.

A. She was at Bayonne terminal in New Jersey.

Q. Was it operated there, or tied up?

A. Operating there.

Q. How long had it been in Bayonne terminal?

A. That I couldn't say, I think about a year and a half prior to January of 1939.

Q. Now after——

Mr. Fridlund: If your honor will excuse me, we intend to cover the specific dates that you request through the testimony of Mr. — (indicating).

The Referee: Then I'll forego that with the witness.

[fol. 82] Q. Now, one of the reasons we adjourned the hearing to get expert testimony was to clarify the status of the various persons aboard the dredge. Now, Mr. Paulson told me that there are several men called levermen or operators, will you describe to me what work they do?

A. Why they call them operators and some call them levermen. They are men that work in eight hour shifts, three shifts, that is night and day. They stand in the lever room on the dredge and they start and stop the pump, that is the dredge, when it's necessary to and——

Q. When you say the pump, you mean the hydraulic pump?

A. Yes, they signal to the engineman and he in turn operates the engine that excavates the material over the dredge area and he then—of course it's just like you operate your automobile—he keeps it within the areaway of the excavation and—in other words he moderates it so it doesn't check its——

Q. Is there one leverman, three throughout the twenty-four hours?

A. Three for the twenty-four hours.

Q. That is one at a time for eight hour shifts?

A. That's right.

Q. Now, will you explain to me what the mates do aboard the dredge?

A. The mate's job aboard the dredge is to keep everything in shipshape condition and see that everything is kept in it- place, the ropes and cables and—et cetera and he usually handles the derrick barge. We have a small derrick barge that we—it's necessary to go out and shift the anchors and head so the dredge can maneuver, and to look after the deck hands to see that they do their work and keep it in shipshape condition and usually, sometimes, when they haven't much to do they wash it, paint and grease up [fol. 83] the dredge. There is a lot to do. But that is usually his job, the mate, now and he gives orders for the small boats when they want oil and fresh water.

Q. Mr. Paulson described some of the men aboard the dredge as sailors, which class does that cover?

A. We call them deckhands. It's a sailor's job all the way through.

Q. Well, as used in the maritime sense, are these men strictly sailors?

A. They're supposed to be sailors.

Q. What?

A. They're supposed to be sailors. You hire a man and ask him if he is a sailor, he says——

Q. Must he have an A. B. Certificate?

A. Not necessarily.

Q. Isn't this work of a laborer's variety?

A. More or less, it's a laborer's variety aboard the dredge.

Q. Well, what I want to know is the use of the term sailors as applied to the dredge. How does that compare to the use of the term sailor on the sea-going vessel?

A. I don't know just how long it is now before us. They're supposed to have A. B. Tickets, they're supposed to have a ticket.

Q. Is there this distinction, the sailors aid in the navigation of a vessel whereas on the dredge they work aboard in the category of common laborers. Is that a true distinction?

A. Well, laborers, common laborers couldn't do the work that is to be done, sometimes, in the dredge, so many cables——

Q. I'm talking now about the ordinary deckhand. Is their work any different from that of a common ordinary laborer's work?

A. I'd say yes.

Q. In what way?

A. I can't take a laborer and put him out and tie the [fol. 84] ship and splice cables and things like that. Oftentimes you might get a brilliant laborer that can work on a dredge that knows that kind of work.

Q. Does the man have to have previous dredging experience to get a job aboard the "Miami"?

A. Well, we don't usually do it that way, I mean, myself, if I have a good willing man and he hasn't worked aboard a dredge and he knew how to tie lines and swim, I'd take him to work.

Mr. Fridlund: Perhaps he can answer your question this way. If you have your choice in hiring deckhands between those who have and those who have not an A. B. Ticket do you take by preference those who do not have an A. B. Ticket?

Mr. Gee: I do, but they're usually hard to get. They don't follow dredge boats. They're seafaring men, want to

go to sea. Aftentimes we do get a married man that is tired of going to sea and he is glad to get it.

Q. But it isn't a prerequisite, to get an A. B.?

A. Not necessarily, no.

Q. Is it common in the dredging trade to call these deckhands sailors?

A. Well, sometimes captains call them sailors. He might say "Sailor, do this or that".

Q. How are they listed?

A. Usually deckhands. Deckhand or seaman.

Q. Are any licenses of any nature required for any of the jobs aboard the dredge, from the captain down?

A. No.

Q. Does that include the engineers?

A. That includes the engineers. In the city of New York he is supposed to be a licensed engineer.

[fol. 85] Q. Well, is there a license required for an engineer aboard this dredge?

A. In New York harbor, yes.

Q. And does that cover the engineer only or other persons?

A. The chief engineer in charge. He is responsible for the boilers.

Q. That is a local regulation?

A. That is a local, yes, building department.

Mr. Fridlund: When you say local, you, what do you mean?

Mr. Gee: Well, I would say the city of New York, the State of New York, which includes Brooklyn. When a man is—has boilers under his jurisdiction, he is supposed to be a licensed man.

Mr. Fridlund: Yes, but they're licensed by the local or federal?

Mr. Gee: City.

Q. That includes the local classification of engineers?

A. Yes.

Q. That has nothing to do with maritime employment?

A. That comes under the stationary license of the City of New York. It's not a propelled vessel.

Q. Would you say that this dredge "Miami" was adapted for navigation?

A. To go to sea, you mean?

Q. Any navigation on water.

A. On water, yes, but she is not built for being self-propelled vessel but she is adaptable to go to sea and be towed by another propelled vessel.

Q. That is what you mean when you say "navigation"?

A. No, I won't call that navigation. I would call that a seaworthy dredge.

[fol. 86] Q. Well, aside from its seaworthiness, would you say that the dredge "Miami" was adapted for navigation?

A. I wouldn't—I just don't know how to put that.

Q. Well, can it transport cargo?

A. Very little cargo.

Q. Isn't it a fact that the machinery of the dredge occupies most of the space?

A. Yes, that is true.

Q. And can it transport passengers, outside of a crew?

A. No.

Q. This particular job around Gravesend Bay——

A. Yes.

Q. —did it work have anything to do with the deepening and removing the obstructions from the channels or harbor?

A. Well, I wouldn't say that, from the—from the standpoint—my own idea is that she was working in navigable waters.

Q. Well, aside from that, nobody quarrels with the fact that Gravesend Bay is a navigable water and that the dredge was in the water. What I want to know is from this particular work that the dredge did in 1939, would you say that, as an expert dredge captain, that this work was in connection of the deepening of the channel or harbor?

A. It was to its advantage, yes.

Q. Wasn't that a secondary advantage?

A. Yes.

Q. Was the primary purpose, as Mr. Paulson testified, to remove matter from beneath the surface of the water and fill in land at Gravesend Bay?

A. That's correct.

Q. And wasn't that the primary purpose pursuant to the city contract?

A. That's correct.

Q. And would you say that the contract was for the purpose of removing obstructions from the channels or the waters in this particular harbor?

[fol. 87] A. Well, that all depends upon the channel. I didn't never go into it that deep to find out exactly just where the location of the channel lines were.

Q. Was the principal purpose of this dredging operation to remove obstructions from beneath the water?

A. Yes.

Q. What obstructions were there?

A. Shoal water, sand. That would make——

Q. Was the primary purpose to remove the obstruction or was the primary purpose to obtain fill?

A. That I couldn't say.

Q. What was the nature of the contract?

A. A fill.

Q. When you say a fill, you mean to obtain material to deposit on the land? To fill in the land?

A. That's correct.

Q. Wasn't it a fact, in this phrase that has been used by the Internal Revenue Department, employer's exhibit F, when it said that work consists of removing obstructions in channels, what is meant by that is to remove obstructions beneath the surface of the water which are a menace to navigation?

A. That's right. True.

Q. Isn't that what is commonly meant, if there is a rock or deposit of some kind and a dredge is engaged to remove that obstruction, as an aid to navigation?

A. That is true.

Q. In this case was this a land job rather than a maritime dredge?

A. Well——

Mr. Fridlund: If you please, isn't this a double question? I have to object to it.

The Referee: I withdraw the question if you press the objection.

Q. What I want to know from you, you have been brought here to give expert testimony, I want to know this, frankly [fol. 88] and openly, this is the proposition that confronts me. The Standard Dredging Corporation relies upon a letter of the Internal Revenue Department which says, I'll read it to you, "This office now holds that dredges which are intended and adapted for navigation and transportation by water of their crews, supplies, and machinery from point to point in carrying on the work of deepening and remov-

ing obstructions from channels and harbors in aid of navigation and commerce are vessels within the meaning of Section 811 and Section 907 of the Social Security Act." Now having relied on this language they claimed exemption in this particular tax case, I want to know from you as a dredge captain whether this particular dredge was intended and adapted for navigation and transportation by water of crews, supplies, and machinery?

A. She was built with that intention, yes.

Q. Well, were they operated along those lines in this particular job in 1939?

A. Yes.

Q. In what way?

A. Well, I would say for deepening the waterway to obtain fill.

Mr. Fridlund: May I suggest one thing, your honor?

The Referee: Yes, Mr. Fridlund?

Mr. Fridlund: That you will notice that the ruling on which reliance is made does not talk about what a vessel is doing at a particular time. It talks about the type of vessel and the design for which she was built. Now, I'll be very glad if you will bring that out and—or if you wish me to do it I will be very glad to bring it out.

[fol. 89] The Referee: Well, you don't seriously urge that if the vessel is built for one purpose and then used for another that the purpose for which it is built, rather than the use of it——

Mr. Fridlund: Yes, so long as this is a vessel of the United States and she is operated on the navigable waters of the United States then her master and crew are exempt from the Federal tax. Now it is the design of the vessel, the nature of her build which governs. It doesn't make any difference whether that vessel is being paid for making a fill or making an excavation. Necessarily every dredging operation has two parts, a picking up and a laying down. The usual situation is that we are usually paid by the federal government for picking up and sometimes have to pay for dumping. In this particular case it happened that we could get the fill in the excavation area free of charge. The government liked to have it deepened—the federal government—and we were paid for making the fill on the land side, but the operations are identical.

The Referee: Well, in a workmen's compensation case the Supreme Court of the United States has held that where the work of a barge hand, for instance——

Mr. Fridlund: Yes.

The Referee: —was not in aid of navigation, that it was not that kind of maritime employment which was included in the term "crew",——

Mr. Fridlund: Well——

[fol. 90] The Referee: —and that is the only purport at that time of my questioning these witnesses, to determine whether this particular work was in aid of navigation. Now, you're relying upon the physical characteristics of the vessel to cover the intents and purposes of this job,——

Mr. Fridlund: Yes.

The Referee: —whereas I feel that I ought to know whether the work done by the persons aboard this dredge was in aid of navigation.

Mr. Fridlund: Well, may I suggest that that is entirely too narrow a scope of question?

The Referee: Well, I'm not limiting the entire case to that. That is one of the phases that I'm interrogating.

Q. Mr. Gee, I want to know whether on this dredging operation, on sucking out sand from beneath the water of Gravesend Bay and depositing it on the roadway to make a new highway, whether you can argue or claim that this work was in aid of navigation, and—that is what I want to know?

Mr. Fridlund: Well, may I direct a few questions with the intent of bringing out that?

The Referee: I'll be glad to have you do so.

By Mr. Fridlund:

Q. Mr. Gee, can you tell us the way this vessel was designed? To do what kind of work?

A. The dredge "Miami" was designed to excavate mate-[fol. 91] rial under the surfaces of water—and obstructions —and for deepening harbors or deepening channels for navigation, or any other obstruction that may be in the channels or navigable waters.

Q. She was designed——

A. Purposely for excavating all or any kind of material, with the exception of rock, under the water. That is the purpose of her being a hydraulic dredge.

Q. In other words, to remove obstructions to navigation?
A. To navigation, correct.

Q. And to deepen harbors?
A. Or channels or harbors.

Q. Is the nature of the work of the vessel in any ways changed by which end of operation the company happens to be paid for? Whether it pays for picking up the material or laying it down?

A. That doesn't change the operation.

Q. The physical operations are the same?
A. At all times.

Q. Does the dredge "Miami" carry aboard, when she is moved from place to place, any supplies or materials?
A. Well, no, no large materials. It is impossible, but such as wood skiffs, or anything like that.

The Referee: Wood what?

Mr. Gee: Wood boats, or anything like that. Those spuds are taken out from the material and one laid on each side and they are fastened securely to the deck, but pontoons and pipelines, that's usually put in other vessels to be transported.

Mr. Fridlund: Does that cover in general the area you had in mind?

The Referee: Let me ask this question.

[fol. 92] By the Referee:

Q. When you answered Mr. Fridlund that this dredge "Miami" was intended for these purposes that you testified to,——

A. Yes.

Q. —isn't the dredge usable also as a hydraulic dredge for commercial purposes. That is to suck sand from beneath the surface of the water or from a sand bank and convey it on to the lands to be used for commercial purposes?
A. Yes. Not for filling.

Discussion off the Record.

A. Well, that I don't know. I wouldn't swear to it.

The Referee: All right, Mr. Rosen.

By Mr. Rosen:

Q. Mr. Gee, I show you employer's exhibit D which is a sketch of the proposed dredging of Gravesend Bay and ask you to mark with a pencil the area of excavation on that sketch.

By the Referee: Indicating the reverse side of employer's exhibit D.

Discussion off the Record.

The Referee: Well, is the shaded area, the area of excavation?

Mr. Fridlund: It is the entire area of excavation.

Discussion off the Record.

[fol. 93] The Referee: Reframe your question. This photostatic material is part of employer's exhibit E and in order to make sure there's no confusion about it we will mark it employer's exhibit E(1). All right, continue Mr. Rosen.

Mr. Rosen: Mr. Fridlund perhaps you can answer this question. Is this shaded area which has the words Gravesend Bay running through it the area of excavation?

By the Referee: As shown on employer's exhibit E(1).

Mr. Fridlund: That is correct. It is marked on the plan here of the army engineer's dredging area and represents the area within which it permits the excavation.

Mr. Rosen: And this red area which is above the word "bulk line". Is that the area where the sand was being deposited?

Mr. Fridlund: That is correct. It is planned as——

Mr. Gee: May I call your attention to the fact that all of that was water area and extended in depth to two point four feet for thirteen feet.

Mr. Rosen: One more question. In the upper right hand corner of this photograph, employer's exhibit E(1), there is a sketch with a cross in red, does that indicate the dredging area?

Mr. Fridlund: It does.

Q. Mr. Gee, at the time these operations were being done [fol. 94] or made by the dredge "Miami" was there a contract for the same work between this employer and anybody else excepting the City of New York for that work?

A. That I don't know. That is official business and I don't—I'm not acquainted with it.

Mr. Fridlund: Mr. Paulson, I think, can answer that question.

Mr. Rosen: I have no further questions.

The Referee: One further question, Mr. Gee.

By the Referee:

Q. Coming back to the dollar a day charge that is to cover the three meals per day furnished by the Standard Dredging Company for the worker aboard the dredge?

A. Yes, sir. Of course that included their room, board and their clean linens and so forth.

Q. Was the dollar a day intended to cover lodging also.

A. Dollar a day is the board. What they call board, I don't know whether——

Q. Well, we distinguish between board and lodging. Board meaning food and lodging sleep.

A. That's correct.

Q. Do you know whether the dollar a day was to cover both?

A. Yes, both.

Mr. Fridlund: I intend to cover that in the testimony of Mr. Pippitt.

The Referee: All right.

Q. And is it correct, as you indicated before, that this provision is made for convenience sake, to——

A. Keep our men intact.

[fol. 95] Q. So that they don't go——

A. Astray.

Q. —home and have difficulty getting back to the dredge out in the harbor. Is that right?

A. That's correct, yes sir.

The Referee: Anything else with Mr. Gee?

Mr. Fridlund: No.

Ray Pippitt, witness, having first been duly sworn, testified as follows:

By the Referee:

Q. What is your connection with the Standard Dredging Corporation?

A. I'm employed in the main office as clerk.

Q. How long have you been so employed?
A. Since Spring of 1937.

The Referee: All right, Mr. Fridlund.

By Mr. Fridlund:

Q. I show you a sketch—a schedule marked "Mike Cassaretakis" and purporting to be a transcript of compilation of a payroll record beginning April 4, 1939 to August 17 for—purporting to be a transcript of the payroll record beginning February 4, 1939 and ending August 17, 1939. Will you tell me whether you prepared that schedule?
A. I made up a pencil transcript from the original payrolls, had it typed by a stenographer and then I checked it with my original records——
[fol. 96] Q. And that record is correct according to your original records?
A. I found that to be correct.

Mr. Fridlund: I'd like to have this marked in evidence.
The Referee: All right, there will be no objection I'm sure. Transcript of payroll is marked in evidence as employer's exhibit H.

Q. Well, now Mr. Pippitt, referring, if necessary, to the schedule which is exhibit H to refresh your recollection, if necessary, will you tell me whether during the entire period, from February 4, 1939 to August 17, 1939, the complainant was employed by employer in this proceeding. That is the New York corporation?
A. Not during the entire period. At first he was employed by the New Jersey corporation.
Q. During what period?
A. From February fourth to the middle of March, March fourteenth was the last day he worked in the New Jersey corporation.
Q. I see.
A. And then from March fifteenth——
Q. Well, now, will you tell me there, where was he hired by the New Jersey corporation?
A. That was while the dredge was still in New Jersey, at or near Bayonne terminal.
Q. And does any report of this period cover work on the Bayonne job?

A. I'm not positive as to that because there was also another contract which was worked at the same time with the federal government. The Bayonne job was with the City of Bayonne.

Q. Well, it doesn't make any difference.

A. But the fill was used for the Bayonne terminal.

[fol. 97] Q. Now, when did his employment, by the New York Corporation, begin?

A. The first day was March fifteenth.

Q. March fifteenth? What year?

A. 1939.

Q. '39. And the amounts earned and net paid and check numbers shown on this schedule are the correct amounts of wages paid and the payments earned by the complainant during the period from March tenth through August seventeenth that he was hired by the complainant in this action?

A. I found them to be correct acccording to the original payroll.

Q. Now, in what capacity was he hired and entered on your payroll records?

A. At first as a cook's helper, and then for most or all of the time the Gravesend Bay job was in progress, he worked twice a week as night cook and the rest of the time as cook's helper and then at the end of the period after he had been laid off as cook's helper——

Q. When was he laid off? As cook's helper?

A. On July ninth, then he was rehired on July twenty-first as a watchman, while the dredge was tied up at Coney Island.

Q. How long did that employment last?

A. He was there as a watchman until August fifteenth.

Q. Now, does the employer, here, keep separate records for the dredge crews and the shore gangs?

A. Yes, they are made up on separate payrolls and kept distinct because some of them are subject to certain things the others are not so they're always kept separate.

Q. Now as to the shore gang, which I believe Mr. Gee testified, generally went between fifty and a hundred men. Was New York Unemployment Insurance reported and paid by the employer?

A. I believe it was.

[fol. 98] Q. You don't know that of your own knowledge?

A. No, I don't recall.

Q. The employment by the New York corporation coincided with the Gravesend Bay job?

A. That's right.

Q. And ended when the vessel was removed from Coney Island—and was removed from Coney Island, is that correct?

A. Well, I'm not sure whether the dredge was removed from there at that time or not.

Q. Well, at or before the removal?

A. Yes.

Q. —of the dredge from Coney Island??

A. Yes.

Q. Well, as to the charges made for so called deductions at the uniform rate, apparently, of six dollars per week, will you tell me the nature of that deduction?

A. Well, that is made at the rate of one dollar per day. You will notice that some places (indicating) two, three, five dollars, depending upon the number of days he worked during that period.

Q. I see. In other words is it correct that his board at first—does this term board include board and lodging?

A. Yes.

Q. And was that board and lodging then given as a part of his pay?

A. No, he was rated at so many dollars per week, that was deducted from it. He was paid the difference.

Mr. Fridlund: I think that is all the questions I have.

Mr. Rosen: No questions.

By the Referee:

Q. In other words, Mr. Pippitt, these men were charged for board and lodging?

A. That's right.

[fol. 99] Q. And the company reimbursed itself to the extent of six dollars a week out of the wages of these men?

A. That's right.

Q. Did the company make social security returns on the dredge men?

A. Not on the dredge men.

Q. Have they made returns since January 1, 1940, since the social security act was amended?

A. Since then, yes.

Q. Now, since then as a matter of information how do you treat this item. Do you report on the net amount or the gross amount?

A. On the gross amount. For instance, the man in this case who earned $28.33 we pay a tax on that amount.

Q. Why do you do that, if you're charging for it?

A. Well, that is the amount he earned. The six dollars is the amount he sent back to us which wouldn't affect his earnings. He would still be earning $28 a week as we are charging him twenty-five cents a day——

Mr. Fridlund: Perhaps I can straighten that out with one or two more questions. Isn't it true, Mr. Pippitt, that the net result is that he is given in cash wages the amount shown under the paid column plus room and board valued at six dollars making his actual pay the amount shown in the column "Earned"?

Mr. Pippitt: That's right.

Q. So that you regard his earnings as the total amount which includes both cash and the value of board and lodging, is that right?

A. That's right.

Q. Have you a record of the duration of this dredging [fol. 100] operation job that "Miami" was engaged in, in 1939?

A. Yes.

Q. When did it commence operating and when did it cease operations?

A. It started digging on March 15, 1939—the last day on which it worked was July seventh.

Q. What happened after July seventh regarding this dredge "Miami"?

A. On that date the dredge was moved to Coney Island and tied up.

Q. And how long was it tied up with a skeleton crew at Coney Island?

A. I don't find any record of that here.

Discussion off the Record.

A. I find the payroll up to and including August thirty-first is marked Coney Island, and beginning September first is marked Clinton Street.

Q. Was it tied up at Clinton Street for any length of time?

A. A month.

Q. And did it have a skeleton crew aboard then?

A. There were a few men working there. I'm not sure.

Q. What do you mean by a few?

A. The chief engineer was there acting as a watchman and two or three other men that I saw on one of my visits there.

Q. And what happened after Clinton street. Where did it go?

A. Then it went to Florida.

Q. When did it start for Florida?

A. They entered the river at Jacksonville on November eighth.

Q. How long did the trip take?

A. About ten days.

Q. So that it left New York about the end of October, is that it?

A. Yes, from the middle to the end.

[fol. 101] Q. Now, there was some testimony before me last time, I think, Mr. Paulson said that this dredging operation in Gravesend Bay lasted about eight months, is that correct?

A. I believe I have given the dates of operation just a moment ago.

Q. Well, are your dates more specific than his statement of eight months?

Discussion off the Record.

Q. All right, explain that on the record.

A. What I just said——

Q. Yes?

A. For a while before the dredge started operating there was a shore crew working on the Gravesend Bay and for some weeks after the dredge had finished.

Q. All right.

The Referee: Now, Mr. Fridlund, I'd like to get a statement from you so that we don't go off into any by-paths of controversy and divert ourselves from the main issue. I want to settle with you the position that the Standard Dredging Corporation takes with regard to this man's earnings. Do you claim that his earnings are the gross amount or the net amount?

Mr. Fridlund: The gross amount. That has already been testified to. He was paid the amount shown in the pink

column in cash. The amount shown in the board column as board and lodging and the total amount of his earnings were in the column marked amount earned.

The Referee: So that this sum of six dollars was an [fol. 102] arbitrary sum charged to the men for the reasonable value of board and lodging, is that it?

Mr. Fridlund: As the measurement of the value of the board and lodging the company is required, for various reasons, to show total value paid and that naturally will include, as it does where New York Unemployment Insurance is applicable, the value, the fair value of board and lodging.

The Referee: Well, under the commissioner's regulations board is fixed at twenty-five cents a meal. That is the reasonable value thereof, and lodging is fixed at two and a half dollars a week.

Mr. Fridlund: Yes, I am familiar with that ruling, but that is a guide.

The Referee: Well, the regulations of the commissioner are as follows:

"In valuing said items of remunerations where a money value for board and lodging or both furnished a worker is agreed upon in a contract of hire, the amounts so agreed upon shall, if more than the rates prescribed herein, be determined the money value of such board and lodging until and unless a different rate for board and lodging is determined by the commissioner. Board and lodging furnished shall be deemed to have not less than the following values: Board, three meals per day, seventy-five cents; less than three meals per day, twenty-five cents per meal; Lodging $2.50 per week or forty cents per day."

See, there are limitations there. You can agree on more but the minimum is fixed by the commission.

[fol. 103] Mr. Fridlund: Well, the—where the actual charge by the company to the employee is a stipulated figure, I doubt whether that regulation comes into play.

The Referee: Well, it's quite clear, the language of it. The difference is one dollar and seventy-five cents a week so far as this particular case is concerned. Does this item of six dollars include seven days a week?

Mr. Fridlund: I don't know.

The Referee: I'll get that from the claimant. Perhaps Mr. Pippitt can answer that.

Q. How many days work a week did this man put in?

A. Six.

Q. Did he sleep aboard the seventh night and get meals the seventh day?

A. I don't know.

Q. All right, we'll inquire about that further. One other point I'd like to make clear. When you say on this employer's exhibit H that the first term of this man's employment is with the New Jersey corporation and the latter part with the New York Corporation, explain that?

A. What I refer to as the New Jersey corporation is the Standard Dredging Corporation and was incorporated in New Jersey and as the parent corporation. What I refer to as the New York Corporation is also known as the Standard Dredging Corporation and is incorporated in the State of New York and the subsidiary of the New Jersey corporation.

Q. Who had the contract to do the dredging work in Gravesend Bay?

A. The New York corporation.

Q. Was that under a charter arrangement with the New Jersey corporation?

A. I don't know that.

[fol. 104] Q. Why do you claim that he worked for the New Jersey corporation from February fourth to March fifteenth? He was on the same dredge "Miami"?

A. On a different contract. The New York Corporation.

Q. Who had the different contract?

A. The New Jersey corporation had it—the contract for the work in Jersey. When the New York corporation started operating, it rented this dredge from the New Jersey corporation. Paid a rental for it.

The Referee: Any other questions?

By Mr. Rosen:

Q. Mr. Pippitt, when did this dredge first come into the waters of Gravesend Bay?

A. Around March 15, 1939.

Q. On what date?

A. The daily report here says they moved on March 15 from Atlantic Basin to Gravesend Bay.

Q. Where is Atlantic Basin?

A. That is over here, around Red Hook somewheres.

The Referee: Brooklyn, that's enough.

Q. Now, will your records show where this dredge was at the beginning of March 1939?

A. There's no record on that because it wasn't operating at the time.

Q. Where was it, will your records show when this barge was rented by the New York Corporation from the New Jersey corporation?

A. Yes.

Q. When?

A. On March 15, was the first day.

[fol. 105] Q. And at that time the barge was in New York waters?

A. Yes.

Q. When did it come into New York waters after it finished that job in New Jersey?

A. A week or two before, I have no exact date.

Q. Well, could we say that it came into New York water around the first of March 1939?

A. It was sometime after February 22, sometime before March 15.

Mr. Rosen: We agree on a date there.

Mr. Fridlund: Yes, I intended to bring that out in the testimony of Mr. Paulson. He knows those dates.

Q. Mr. Pippitt, what office do you work?

A. Main office.

Q. Where is that?

A. 85 Broadway.

Q. You work with a New York Corporation?

A. And I work with a New Jersey corporation and that being the parent organization also do work for the subsidiary.

Q. These payroll records are records kept by the New York corporation, is that correct?

A. These are both parts of the New Jersey and parts of the New York.

Q. I see.

Mr. Rosen: All right, that's all.

Discussion off the Record.

Mr. Fridlund: The dredge "Miami" was operated at Bayonne, New Jersey, by its owners the parent corporation Standard Dredging Corporation until February 23.

[fol. 106] The Referee: That is 1939?

Mr. Fridlund: 1939, and from February 3 to February——

The Referee: Twenty-third.

Mr. Fridlund: Twenty-third. The claimant was employed, according to what is there, employed, according to the payroll records, exhibit H——

The Referee: Well, no. Your exhibit H says he was employed the first day by the New York corporation on March 15?

Mr. Fridlund: I'm talking about the New Jersey corporation at the Bayonne job.

The Referee: Well, then I misunderstood you. You just said according to my understanding that the first day——

Mr. Fridlund: No.

The Referee: Well, straighten yourself out, or straighten me out.

Mr. Fridlund: Let me straighten you out. The dredge "Miami" was operated at Bayonne, New Jersey, on the job there by its owner the Standard Dredging Corporation, a New Jersey corporation——

The Referee: Yes?

Mr. Fridlund: —until February 23, 1939. During the last twenty days of that period, namely, February third to February twenty-third, inclusive, the—the claimant was the—employed on the dredge at Bayonne by the New Jersey corporation.

The Referee: I see.

Mr. Fridlund: And his employment was continued by the [fol. 107] New York corporation after the dredge "Miami" finished the Bayonne job, from February twenty-third until March fourteenth when the Gravesend job began, by the New York corporation. At that time he was employed by the New York corporation.

The Referee: Well, what happened between February twenty-third and—1939—and March 14, 1939? Where was the man working then?

Mr. Fridlund: Does your records show that, Mr. Pippitt?

Mr. Pippitt: That was the time while the dredge was at Atlantic Basin.

Mr. Fridlund: Let's get that straight. She was at Atlantic Basin, in Brooklyn, during what time, what period.

Mr. Pippitt: From February twenty-third to—until March fifteenth.

The Referee: Now, what I want to make clear now is who was the employer between March—February 23, 1939 and March 14, 1939?

Mr. Pippitt: That was the New Jersey corporation.

The Referee: While he was at the Atlantic Basin?

Mr. Pippitt: Yes.

The Referee: I see. All right. And then he was transferred to the New York payroll on March 15, 1939, and continued until August seventeenth, is that right?

Mr. Pippitt: That's right.

The Referee: All right. Now I got that clear.

[fol. 108] Mr. Fridlund: For what purpose was the dredge at the Atlantic Basin?

Mr. Pippitt: For repairs.

Mr. Fridlund: Testimony was given last time, I believe, to the effect that she was in drydock, is that correct?

Mr. Pippitt: Not to my knowledge.

The Referee: That doesn't make any difference, I'm only interested in the situs. Any other questions for Mr. Pippitt? Have you any other witnesses Mr.—are you going to ask Mr. Paulson?

Mr. Fridlund: I think the questions that we were going to be covered with Mr. Paulson, have already been covered.

Mr. Rosen: Just one angle I want to get on this record. During the life of the work on the contract between the New York corporation and the City of New York was this corporation doing work under any other contract covering the same territory?

Mr. Fridlund: Contract with any other party?

Mr. Rosen: Yes.

Mr. Fridlund: Not so far as I know.

Mr. Paulson: Yes, by the Belt Roadway. Down further we had another dredge down there.

Mr. Pippitt: Dredge "Allendale Paulson".

Mr. Paulson: Digging out material for the government.

Mr. Rosen: What government?

Mr. Paulson: During the same period. What was the name of that outfit—Henry Stears had a contract with the [fol. 109] City of New York to make another fill further down below the—below the other side of Hamilton Parkway and in that contract, while we got a sub-contract to put in a fill and also the government came along and advertised a dredging job out in Red Hook Flats with the idea of putting that material in this fill and we had the—we took the

contract for the government—with the government to put that material on the fill and also took the contract with the subcontract with Stears to put the stuff in the fill.

Mr. Rosen: Was the dredge "Miami" engaged in that work?

Mr. Fridlund: What was your question?

Mr. Rosen: I wanted to limit it to "Miami" only.

Mr. Fridlund: I thought you said the work?

Mr. Rosen: No, no, the dredge "Miami", it was working pursuant to the contract with the City of New York.

The Referee: All right.

Claimant Recalled

By the Referee:

Q. How many days a week did you work?

A. Six days a week.

Q. And how many nights did you sleep aboard the dredge?

A. Oh, most of the time. I sleep there because I—if I didn't sleep there I can't take care of the people in the morning.

[fol. 110] Q. You claim that you slept there seven nights a week?

A. Sometimes.

Q. Well, was it more often than not?

A. Well, to the beginning I go once a week home, but then I stay steadily. In summertime I almost go out most time.

Q. And on your day off, did you get three meals a day too?

A. No, of course not.

Q. Are you willing to accept this figure of six dollars as representing the value of the board and lodging you got per week?

A. What do you mean?

Q. Well, if you got three meals a day——

A. Yes.

Q. —and a night's lodging, you're entitled to a credit of one dollar and fifteen cents a day—by the day, or if you were there throughout all week, you got that for seven days a week. It would come to seven dollars and seventy-five cents on the basis of two dollars and fifty cents a week for lodging and seventy-five cents a day for meals. Now, is six

dollars to your mind a fair and reasonable value of what you got for board and lodging on this job?

A. I don't know. The company knows that. We only know one thing, they tax us a dollar a day for everything and the kitchen people pay a dollar a day.

Q. In other words they gave you so many dollars in cash and then they gave you board and lodging which they said was worth a dollar a day for six days a week. Are you willing to accept those figures at the rate of one dollar a day for the six days a week?

A. They charge what I say, yes.

Q. Is that satisfactory to you?

A. What I'm going to do? I can't declare war with the company.

[fol. 111] Q. Well, no, you don't have to take—if you don't want to—What I want to know is from what you got including the day off?

A. Yes, sir.

Q. Is a dollar a day fair and reasonable value for what you received in board and lodging from this company, or six dollars a day, make it by the week. What do you say?

A. Any way the court makes I'm not satisfied.

Q. I wasn't there, I don't know how many meals you got.

A. Three meals.

Q. On your day off you didn't have any meals?

A. No.

Q. That is eighteen meals a week. That is four and a half dollars a week, according to what the commissioner figures it. Now, if you were there six nights a week, it would come to two dollars and forty cents or six dollars—a total of six dollars and ninety cents. Are you going to argue about his ninety cents or his six dollars a reasonable value of what you got?

A. I wouldn't argue, I'm satisfied.

Q. You understand what I'm saying?

A. Everybody satisfied? I'm satisfied.

Q. You're satisfied to accept the figure of six dollars?

A. If it's all right to you, it's all right to me.

Q. Its immaterial to me. I'll give you everything you earned. What I want to know is, sometimes you stayed aboard and sometimes you went home and that you didn't eat there on your day off?

A. No.

Q. What I want to know is according to what you actually got weekly——

A. Yes.

Q. —would six dollars fairly represent the value—if we consider twenty-five cents a meal as a reasonable figure [fol. 112] and forty cents a night for a reasonable figure for lodging——

A. Yes.

Q. —would six dollars cover those two items? Would it?

A. All right, I think that is too much.

Q. Too much?

A. Yes.

Q. Then we'll give you six dollars. Will you be satisfied?

A. No, six dollars not satisfied.

Q. Well, if your pay is increased by six dollars a week——

A. Yes.

Q. —so much cash, plus six dollars a week, is that agreeable to you to show what you got out of this job for your labor?

A. That's right.

Q. You understand it now?

A. Yes.

Q. Is it clear?

A. Yes.

Q. We are not taking from you, we are adding it to you?

A. Yes.

Q. Now, tell me this, when you first got this job, did you work at Bayonne?

A. Statue of Liberty. Statute of Liberty is there and I'm here. It's downtown New York. Don't call that Bayonne.

Q. Was that on a job?

A. Of course it's on a job. They pump from there to Bayonne.

Q. They pump to Bayonne?

A. Yes.

Q. To the New Jersey shore?

A. Yes.

Q. Do you know what water that was in?

A. I don't know.

Q. And how long did this work last at the Statue of Liberty?

A. Only a few weeks I remember.

Q. And did you start around February Fourth?

A. Yes, sir.

Q. And then is it a fact from that, the day of Washington's birthday to the middle of March——

A. Yes.

[fol. 113] Q. —you were in Brooklyn?

A. After the twenty-third of February, like they say, we went to the drydock.

Q. That is what I said. Is that true?

A. Yes.

Q. And after March fifteenth you began on the Gravesend Bay job in Brooklyn?

A. Yes.

Q. So the dates that Mr. Pippitt gave us are correct?

A. I was in drydock all the time. Only two people, me and the steward.

Q. Now, they say that while you were working on the Bayonne job and while you were in drydock you were working for the New Jersey corporation?

A. I don't know how they figure.

Q. That is inside——

A. I only know the office in New York and the—they hired me from New York.

Mr. Fridlund: I think if he sees the checks he'll understand.

Q. Were you paid by check?

A. Yes, all the time by check. Never cash. I cash my own checks in the same place.

Q. Now, look these checks which have been handed to me by counsel show that from February tenth to March tenth, inclusive, being the dates of checks, you got paid by check drawn on a Bayonne bank called the Hudson County National Bank by Robert A. Craig. Is that correct? Look at these checks and see if they are yours. With your signature on them.

A. That is mine.

Q. What?

A. That is all mine.

Q. Are all those checks yours and with your endorsement?

A. Yes.

Q. And you notice they are drawn on a New Jersey Bank?
A. Well, it's the nearest bank.

[fol. 114] The Referee: All right, series of five checks marked in evidence as employer's exhibit I.

Mr. Fridlund: I'd rather not put them in evidence.

The Referee: I'll give them back to you. Why don't you want to put it in the record?

Mr. Fridlund: It just encumbers the record, you can stipulate.

The Referee: I can't get him to stipulate. I don't know the facts nor does Mr. Rosen.

Q. Now, these other checks which have been handed to me are drawn by the Standard Dredging Corporation, a New York corporation, on the National City Bank of New York, Brooklyn branch, signed by Robert A. Craig, paymaster. Are those your checks? Look at them please.

The Referee: And while the claimant is looking at the checks, will you Mr. Fridlund, identify Robert A. Craig whose name is signed to the checks which comprise employer's exhibit I.

Mr. Fridlund: Well,——

The Referee: I'll take your statement in lieu of testimony.

Mr. Cassaretakis: Mr. Pippitt, he is the paymaster at Bayonne.

The Referee: If you don't know, I'll suspend for a moment and call Mr. Pippitt.

[fol. 115] Mr. Pippitt Recalled

By the Referee:

Q. Mr. Pippitt, who is Robert A. Craig?
A. He is the paymaster at Bayonne terminal.
Q. And why are those checks drawn on his personal account?
A. As a matter of convenience, I presume. I don't know.
Q. Are those checks out of the funds of the Standard Dredging Corporation of New Jersey?
A. Oh, yes.
Q. Were they allocated to that corporation on your books and records?
A. Yes.

Q. Now, if he was stationed in Bayonne why is his name on the other checks of the Standard Dredging Corporation of New York? The others that the claimant is looking at.

A. After the job at Bayonne was finished Craig went over to Brooklyn and was, for a while, in charge there at Atlantic Basin and Red Hook.

Q. What I want to know is, these Bayonne checks, which are employer's exhibit I, are they out of funds of the New Jersey corporation or the New York corporation?

A. The New Jersey corporation.

Q. Are you definitely sure about that?

A. Definitely.

Claimant Recalled

By the Referee:

Q. What do you say now?

A. These are my checks.

[fol. 116] Q. All your checks, is that right?

A. Yes, sir. And a couple of more missing here. I know the steward, I give the steward to cash it sometime. A couple missing.

The Referee: Checks of the Standard Dredging Corporation, a New York corporation, to the claimant's order, drawn on the National City Bank of New York, between the dates of March 17, 1939, and August 12, 1939, are marked in evidence as one exhibit as employer's exhibit J. I think that is established now.

Q. Did you have anything to do with Mr. Sackett, the superintendent?

A. Well, he was the boss around there.

Q. Did he boss you?

A. Oh, yes, he could tell the steward to fire me. Mr. Sackett dont' bother everybody else. He wanted to fire somebody he say the steward, "Fire that man." But he say to this man, "Fire this man."

Q. Did he have anything to say over you?

A. No.

Q. How often was he on the dredge?

A. Every day he come around, every day.

Q. What did you see him do?

A. Look around and that is all.

Q. All right, anything else you want to tell me in this case?

A. Well, that is all. What else I got to say?

[fol. 117] Mr. Paulson recalled.

By the Referee:

Q. Can you tell me in what waters the first job, on which this claimant worked on the dredge "Miami", was performed?

A. Well, I believe under the waters of New Jersey, but I'm not exactly sure.

Q. Do you know where the dredge was located during those operations?

A. Yes.

Q. Will you describe to the best of your ability where, physically, it was located?

A. It was right to the south of the Statue of Liberty, south of the Statue of Liberty, three or four thousand feet.

Q. And to what shore was the pipe line attached?

A. The pipe line was attached to the fill, Bayonne fill, out in the main——

Q. Have you any records here which would indicate with exactitude the location of the dredge on that operation?

A. No, we have no records here.

Q. Well, I don't want to testify in this case, but I had another dredge case which also had an operation on the Statute of Liberty and Bedloe's Island.

A. I'm pretty sure this dredge was in the lines of New Jersey, because——

Q. As I was saying, this other case's dredging operations were southwest of Bedloe's Island nad government maps were brought in and I recollect that the state lines, as between New York and New Jersey, came between it, that is included this operation in New Jersey section of those lines. But of course that is not evidence in this case, it's just my recollection.

[fol. 118] Mr. Fridlund: If you wish, I can take the stand in that regard because I looked into that subject matter at the time when Mayor Hague was very busy assessing his personel property taxes in Jersey City and in looking into the matter in that time I satisfied myself that, one—that the dredge was within the state waters of New Jersey and,

two—that it was outside of the jurisdiction of Jersey City and in the city of Bayonne.

The Referee: Well, in this case it's fairly academic, because even without these New Jersey earnings, as you term them, if I should find that the claimant worked in covered employment he would have earnings of $574.74 which would be adequate to give him benefits. Whether they would give him maximum benefits or not I would have to figure out.

Discussion off the Record.

By the Referee: According to my calculations if this claimant is entitled to benefits his earnings in the base year would bring him within the eleven dollar class under section 505 of the Law. Now, if the earnings in the first part of his employment were included, you get a higher rate.

All right, do you want to recall Mr. Pippitt?

Mr. Pippitt Recalled.

[fol. 119] By Mr. Fridlund:

Q. Has the New Jersey corporation an office in New York.

A. Yes.

Q. Where is that office?

A. 80 Broad Street.

Q. And in 1939 did it have an office in New York?

A. Yes.

Q. How many employees did the New Jersey corporation have in its New York office during 1939?

A. I'm not sure of the exact number. Somewhere between twelve and twenty.

Q. Permanent employees?

A. Yes.

Q. Do you know whether the New Jersey corporation filed an initial statement—made returns and paid contributions—unemployment insurance contributions to the state of New York on its New Jersey—on its employees at 80 Broad Street?

A. I don't know.

Mr. Fridlund: May I correct some of those statements? I'm afraid Mr. Pippitt is not familiar with the situation. I'd like to call Mr. Paulson.

Mr. Paulson: My son has charge of the tax matters.

Mr. Fridlund: Could you answer those questions, Mr. Paulson?

(To the referee) Mr. Paulson is an officer of the company.

(To Mr. Paulson) Mr. Paulson will you tell us the situation with regard to the officers of the New Jersey end of your corporation. Its operations with particular reference to its operations in New York?

[fol. 120] Mr. Paulson: All I know, the New York officials pay taxes to New York, all the employees of the New York office, including myself as an official and the other officials, we pay compensation to the State of New York and personally file reports. Mr. Gee's salary is in New York, he is out at Jamaica Bay. We have a terminal there.

Mr Fridlund: Mr. Paulson, will you answer this question? Does the Standard Dredging Corporation of New Jersey maintain a New York office?

Mr. Paulson: We maintain several offices. We're a large corporation. We have a large office in New Orleans, Galveston——

Mr. Fridlund: In New York?

Mr. Paulson: They have an office in New York where they do certain work.

Mr. Fridlund: Is the New Jersey corporation a subject employer within the meaning of the New York State Unemployment Insurance Law and does it pay contributions to the New York State Unemployment Insurance Fund?

Mr. Paulson: Yes, for the employees they have with the New York State Insurance Law.

Mr. Rosen: Then, Mr. Referee, it would be proper to take into consideration here that periods of time that this dredge "Miami" was laid up at the Clinton Street drydock, as this employee, according to the record, at that time was an employee of the Standard Dredging Corporation of New Jersey and all or the greater part of his services with that corporation were within the State of New York——

[fol. 121] Mr. Fridlund: May I correct—suggest a correction on that? The greater part—the claimant was hired by the New Jersey company in New Jersey for work there and the greater part, to wit, approximately sixty-odd per cent in time and amount was in the State of New Jersey.

Mr. Rosen: Well, according to the record he was hired February third.

Mr. Fridlund: That's right.

Mr. Rosen: The boat went to drydock February twenty-third, it stayed in drydock until March fourteenth, so surely the greater part of his time spent was in the State of New York.

The Referee: Well, there is this question about that. Now, let's not get into too many ramifications about that because the Law was different prior to June 3, 1939. Prior to that date the Law provided that all or the greater proportion of the work had to be performed within the State of New York to render it subject. After June 3 there were various changes and insofar as this particular claimant would be concerned there were—if he showed that he performed some services within the State of New York and the base of operations was in the State of New York then he would be in covered employment.

Mr. Fridlund: Yes.

The Referee: Or if he showed that the work was localized within the State of New York, that is that the main work was done within the confines of the State of New York. Whatever was done outside of the State was incidental to [fol. 122] the work within. The work then would be subject employment. But either way, it seems to me, the employment here is New York employment because I'm going to distinguish between the work done for the New Jersey corporation and the work done for the New York corporation and, parenthetically, I have rechecked my figures, I find that the claimant, if eligible, that is if he worked in covered employment would be entitled to maximum benefits under our Law and, therefore, we can safety exclude the New Jersey corporation in his calculation because his New York earnings are $574.10 bringing him well within the maximum benefits of $15.00 a week for thirteen weeks.

Mr. Rosen: I'm interested in the other angle however, for tax purposes, Mr. Referee.

The Referee: Well, this is a claimant's case Mr. Rosen, and I cannot go into the general tax angle in this case. I'm only confronted with the problem of whether this claimant worked in employment subject to the Unemployment Insurance Law and, if so, what his earnings were and I think we had better leave it at that point, Mr. Rosen, and surely his work within the New York Corporation was wholly performed within the State of New York, both prior to June third and subsequent to June third, so that becomes of no

moment in this particular phase of questioning. Is there any other testimony to be offered?

Mr. Rosen: I'd like to ask Mr. Paulson——

[fol. 123] Mr. Paulson Recalled

By Mr. Rosen:

Q. Mr. Paulson, there is no question, is there but that the work performed by the "Miami" at Gravesend Bay was performed under the supervision and control of the New York corporation from its New York office?

A. That's right.

Q. Now, the remuneration received by the corporation for such work was remuneration received from the City of New York pursuant to its contract with you. Is that correct?

A. That's right.

Q. And the corporation received no other remuneration for any of the work done by the dredge "Miami" in Gravesend Bay under this contract?

A. No.

Q. No other remuneration?

A. No.

Mr. Rosen: That is all, Mr. Referee.

The Referee: Anything else, Mr. Fridlund?

Mr. Fridlund: May—I wish—I'd like to submit a memorandum, the record is rather lengthy and I think I have sufficient recollection of the facts testified to, however, so that I can summarize it in the brief and write the brief.

The Referee: Unless you feel you want to dwell upon the facts, I can say to you that you can safely devote yourself to the legal aspects of the case.

Mr. Fridlund: It seems to me that this is primarily a question of Law.

The Referee: Because my notes are quite lengthy and detailed and I have a definite recollection of the testimony [fol. 124] here so if you want to save time you can keep from dwelling upon the facts and concentrate upon the law.

Mr. Fridlund: I'd like to do that.

The Referee: You can suit yourself. If you want to submit a memorandum of facts it's perfectly agreeable to me too.

Mr. Fridlund: How soon do you want a memorandum?

The Referee: I'll suit your convenience.
Mr. Fridlund: By the end of the month?
The Referee: If——
Mr. Rosen: Mr. Fridlund, without pressing you too hard, could you submit it just as soon as possible?
The Referee: Let's get off the record.

Discussion off the Record.

By the Referee:

Case adjourned to October 7, 1940 at two p. m. for the purpose of decision only. To be placed on the calendar without notice to the parties. Briefs to be submitted and exchanged prior to October 7, 1940.
By the Referee: Case closed.

Certified to be a True and Accurate Copy of Transcript of Minutes.

William Newrock, Reporter.

[fol. 125] NOTE RE EMPLOYER'S EXHIBIT A

This exhibit is a certified copy of a Consolidated Certificate of Enrollment and License. It is similar to Employer's Exhibit B, reproduced hereafter, and covers the enrollment of the "Miami" from April 8, 1936, to April 27, 1939. It is omitted pursuant to stipulation.

(Here follow 2 photolithographs, side folios 126-127)

Cat. No. 1271
(Rev. May 1, 1919)

Permanent or Temporary
PERMANENT
Certificate No. 466

THE UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

OFFICIAL NO.	SIGNATURE
169908	

Measured at Los Angeles, Calif. 1923
Rebuilt at 19
Remeasured at New York, N.Y. 1929

Service: Suction Dredge
No. of crew, including master: 12
Horse-power:

Draft 7'

Consolidated Certificate of Enrollment and License

(SECTIONS 4311 AND 4312, REV. STATS., AND ACT OF APRIL 30, 1920—U. S. C., TITLE 46, SECS. 289 AND 290)

In Conformity to Title L, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States

W. L. PARSONS, of New York, N.Y. Secretary,

having taken and subscribed the oath[1] required by law, and having sworn[1] that

STANDARD DREDGING CORPORATION

19 Exchange Place, Jersey City, N.J.

Incorporated under the laws of the State of New Jersey,

IS A citizen of the United States and the sole owner of the vessel called the

"MIAMI"
(Name of vessel)

of NEW YORK, N.Y.
(Home port)

and that the said vessel was built in the year 1913, at Long Beach, Calif., of[2] steel

as appears by[3] P.E.NO. 450, issued at New York, N.Y., Apr. 8, 1929, now surrendered, Preparing Enrolment

and[4] said certificate having certified that the said vessel is a[5] dredge; that she has one deck, 1 (Dredge) mast, a pilot house forward, and a cabin aft, and a stern; that her register length is 165.0 tenths feet, her register breadth 40.0 tenths feet, her register depth 9.2 tenths feet, her height[6] tenths feet; that she measures as follows:

	Tons	Tenths
Capacity under tonnage deck,	481	44
Capacity between decks above tonnage deck,		
Capacity of inclosures on the upper deck, viz: [7] Forecastle ; bridge ; poop ; break ; houses—round 16.16, side , chart , radio ; access hatchways ; [8] light and air	66	16
Gross tonnage,	547	60
Deductions under Section 4153, Revised Statutes, as amended (Section 77, title 46, United States Code):		
Crew space 66.16 not allowed; Master's cabin,		
Steering gear ; Anchor gear, ; Boatswain's stores, ;		
Chart house, ; Donkey engine and boiler, ; Radiohouse, ;		
Storage of sails, ; Propelling power (actual space [9]),		
Total deductions,		
Net tonnage,	547	

The following-described spaces, and no others, have been omitted, viz:[10] Forepeak , afterpeak , other spaces (except double bottoms for water ballast , open forecastle , open bridge , open poop , open shelter deck , cabins , companions , galley , skylights , wheelhouse , water-closets 4.58 ; anchor gear , condenser , donkey engine and boiler , steering gear , light and air over propelling machinery 518.88 , other machinery spaces .

Employer's Exhibit B

W.L. PAULSON, of New York, N.Y. Secretary,

having taken and subscribed the oath[1] required by law, and having sworn[2] that

STANDARD DREDGING CORPORATION

19 Exchange Place, Jersey City, N.J.

Incorporated under the laws of the State of New Jersey,

IS A citizen of the United States and the sole owner of the vessel called the

"MIAMI"

and that the said vessel was built in the year 1913, at Long Beach, Calif., as appears by Reg. 459 issued at New York, N.Y., Apr. 9, 1929 now surrendered. Previous Enrolment

and[3] said applicant having certified that the said vessel is a[4] single deck A(Double) mast, a Plain head, and a Square stern; that her register length is 133.1 TR feet, her register breadth 40. TR feet, her register depth 9.25 TR feet, her height[5] TR feet; that she measures as follows:

Capacity under tonnage deck,	483	44
Capacity between decks above tonnage deck,		
Capacity of inclosures on the upper deck, viz: " Forecastle ; bridge ; poop ; break ; houses—round 65.16, side , chart , radio ; excess hatchways ; " light and air	65	16
Gross tonnage,	547	60
Deductions under Section 4153, Revised Statutes, as amended (Section 77, title 46, United States Code):		
Crew space 65.16 not allowed; Master's cabin, ;		
Steering gear ; Anchor gear, ; Boatswain's stores, ;		
Chart house, ; Donkey engine and boiler, ; Radiohouse, ;		
Storage of sails, ; Propelling power (actual space "),		
Total deductions,		
Net tonnage,	547	

The following-described spaces, and no others, have been omitted, viz:[6] Forepeak , afterpeak , other spaces (except double bottoms) for water ballast , open forecastle , open bridge , open poop , open shelter deck , cabins , companions , galley , skylights , wheelhouse , water-closets 4.33 , anchor gear , condenser , donkey engine and boiler , steering gear , light and air over propelling machinery 378.88 , other machinery spaces .

And the owner[7] having agreed to the description and measurement above specified, the said vessel has been duly ENROLLED at this PORT;

LICENSE

And W.L. PAULSON, the master, having sworn that he is a citizen of the United States, that this license shall not be used for any other vessel, or for any other employment than is herein specified, or in any trade or business whereby the revenue of the United States may be defrauded:

LICENSE is hereby granted for the said vessel to be employed[8] in carrying on the COASTING TRADE (Coasting Trade, Cod Fishery, or Mackerel Fishery) for ONE YEAR from the date hereof, and no longer.

GIVEN under my hand and seal at the PORT of NEW YORK

District of NEW YORK, this TWENTY-EIGHTH day of APRIL

in the year One Thousand Nine Hundred and THIRTY-NINE

HARRY W. DURNING
Collector of Customs.

By, EDWARD FITZPATRICK

[1] Insert names and address of person by whom oath or affirmation was made.
[2] Applicant—"declare" (when necessary)
Witness—"affirm" (when necessary)
[3] Strike out words "and" or "the." If more than one person, write "he for said owning" and the verb "declares" in lieu of "declare." If the owners of shares unequal, their shares and relations (if interested persons) to each other, or part owner, must be stated. If owned by a corporation, insert name of State of incorporation.
[4] If not "single," "double," "treble," or "quadruple," so describe.
[5] Use the words "mast," "deck," "stern," "head," "number of ——," "rudder," "if they shall be of a new vessel, "new," "old," "rebuilt," or "old hulled," in the first documents of a new vessel, give the names and tons of the former vessel.
[6] For a vessel having a steam, gas or internal combustion engine, write "steam for one or all other vessel," "steam for one or all other vessel," "steam for one or all other vessel," or such like.
Where tonnage deck is upper deck, so state.
Every vessel of all nations is required to measure at each of such ports.
To be inserted in gross only when authorized by the Commissioner of Navigation.
Steam tonnage, representing actual machinery space, and in commercial propelling power.
To be inserted, if open and adequate for measurement when, as on a deck subject to load, deck to the hold, all other spaces between forecastle, afterpeak, and other water-ballast spaces must be on or above the upper deck to the load lines.
[7] In the first documents of a new vessel, give the name of the person manufacturing certificate of measurement.
[8] Insert "coasting trade," "cod fishery," or "mackerel fishery," as the case may be.

Employer's Exhibit B

Front.

90A

126

Employer's Exhibit B

Book.

INDORSEMENTS OF RENEWAL

Renewal No. 1. Port of .....

The within-described LICENSE is hereby renewed for ONE YEAR from ....., 19

(SEAL) ..... Collector of Customs.

Renewal No. 2. Port of .....

The within-described LICENSE is hereby renewed for ONE YEAR from ....., 19

(SEAL) ..... Collector of Customs.

Renewal No. 3. Port of .....

The within-described LICENSE is hereby renewed for ONE YEAR from ....., 19

(SEAL) ..... Collector of Customs.

Renewal No. 4. Port of .....

The within-described LICENSE is hereby renewed for ONE YEAR from ....., 19

(SEAL) ..... Collector of Customs.

Renewal No. 5. Port of .....

The within-described LICENSE is hereby renewed for ONE YEAR from ....., 19

(SEAL) ..... Collector of Customs.

Renewal No. 6. Port of .....

The within-described LICENSE is hereby renewed for ONE YEAR from ....., 19

(SEAL) ..... Collector of Customs.

Cat. No. 1871

DEPARTMENT OF COMMERCE

BUREAU OF MARINE INSPECTION AND NAVIGATION

CONSOLIDATED ENROLLMENT AND LICENSE

FOR THE

COASTING TRADE

(Steam, Motor Vessels, Yachts, or Pleasure)

No. 466

OF THE

Dredge

CALLED THE

KLAMT

OF

New York, N.Y.

947 gross, 947 net,

ISSUED AT THE

Port of NEW YORK, N.Y.

A.D. 19 27 , 19 29.

WHERE SURRENDERED

WHEN SURRENDERED

WHY SURRENDERED

.....

Collector of Customs

PREFERRED MORTGAGE INDORSEMENT

OF VESSEL OF 100 GROSS TONS AND OVER

MORTGAGE DESCRIPTION

(DISCHARGE NO.)

Mortgagor .....

Mortgagee .....

Indorsed ....., 19 , at m.

Total amount, $

Date of maturity ....., 19

Discharge amount, $

Port of .....

[SEAL]

Collector of Customs.

MORTGAGE DISCHARGE

(DISCHARGE NO.)

Port of .....

....., 19

The sum of $ ..... has been paid on the above-described mortgage, the certificate of such discharge being filed in this office

..... , 19 , at ..... m.

SEAL

Collector of Customs.

INDORSED DUTY OF MASTERS

(1) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(2) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(3) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(4) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(5) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(6) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(7) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(8) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(9) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(10) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(11) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(12) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(13) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

(14) Port of ....., 19...

....., having taken the oath required by law, is at present master of the within-named vessel.

..... Collector of Customs.

INSPECTION CERTIFICATE EXPIRES

1 ....., 19 — Port of ..... Deputy Collector of Customs.

2 ....., 19 — Port of ..... Deputy Collector of Customs.

3 ....., 19 — Port of ..... Deputy Collector of Customs.

4 ....., 19 — Port of ..... Deputy Collector of Customs.

5 ....., 19 — Port of ..... Deputy Collector of Customs.

[fol. 128] EMPLOYER'S EXHIBIT C

Standard Dredging Corporation

(a New York Corporation)

November 9, 1938.

The District Engineer, New York District, Room 710 Army Building, 39 Whitehall Street, New York, N. Y.

DEAR SIR:

We request a permit for dredging an area shown on the attached map, in Gravesend Bay near Norton Point. The depth is to be from twenty-five (25) to fifty (50) feet below M.L.W. in the places dredged, and we estimate that between two and three million yards are to be removed. We desire to deposit the material on the New York City Department of Parks Parkway Fill, as shown on the attached map, extending within the bulkhead and shore lines from Fort Hamilton to Bay Parkway, along Gravesend Bay.

Very truly yours, Standard Dredging Corporation,
—— ——, Executive Vice President.

C. B. Clarke. hf.
encls.

[fol. 129] EMPLOYER'S EXHIBIT D

In reply refer to
File No. Permits 3548/3

Public Notice No. 284

WAR DEPARTMENT

United States Engineer Office

New York District, New York, N. Y.

Room 710, Army Building, 39 Whitehall Street

New York City

November 16, 1938.

Public Notice

To whom it may concern:

Application has been made to this office by the Standard Dredging Corporation for a War Department permit to

dredge in Gravesend Bay, north of Norton Point, Borough of Brooklyn, New York City, N. Y.

Plans showing the proposed work are on file in this office and may be seen by interested parties. A rough sketch is shown on the reverse of this sheet. The plans propose dredging to a depth of from 25 to 30 feet below mean low water, dredged material to be deposited shoreward of a proposed bulkhead to be constructed by the Department of Parks, City of New York, in connection with the Shore Parkway.

The decision as to whether or not a permit will be issued on the plans submitted must rest primarily upon the effect of the proposed work on navigation. Any criticisms or protests regarding the plans from the standpoint of navi- [fol. 130] gation should be submitted to this office prior to November 26, 1938, as it is desired to act on the application on that date.

For the District Engineer:

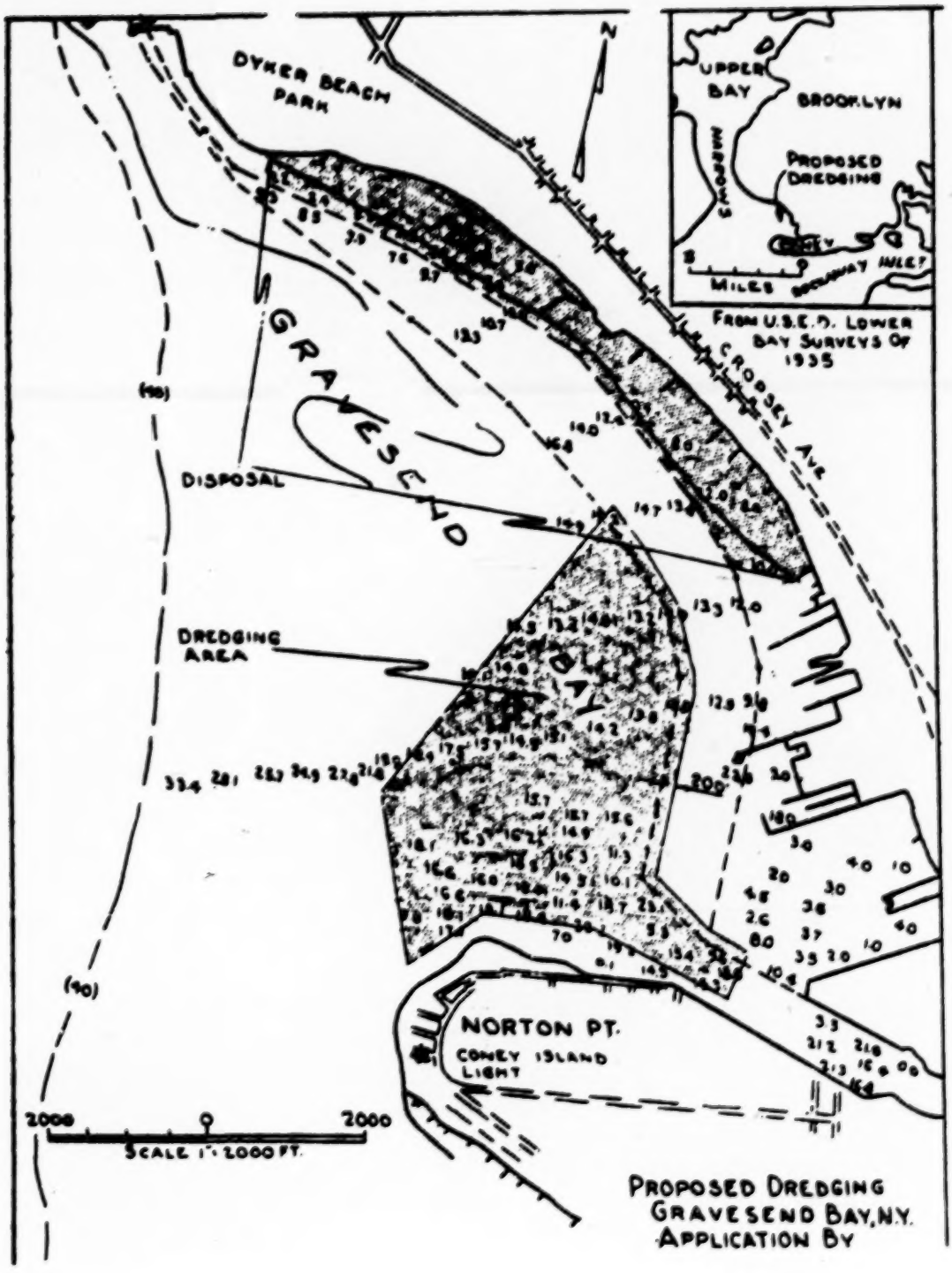
(s) J. F. C. Hyde, Major, Corps of Engineers, Assistant.

(Over)

(See Opposite)

(Here follows 1 photolithograph, side folio 131)

Employer's Exhibit D



[fol. 132] EMPLOYER'S EXHIBIT E

WAR DEPARTMENT

United States Engineer Office

New York District, N. Y.

Room 710, Army Building, 39 Whitehall Street

New York, N. Y.

Refer to File No.
Permits 3548/4

December 2, 1938.

Mr. C. B. Clarke, Executive Vice President, Standard Dredging Corporation, 80 Broad Street, New York City, N. Y.

DEAR SIR:

Referring to your application dated November 9, 1938 for a War Department permit to dredge in Gravesend Bay north of Norton Point, Borough of Brooklyn, New York City, N. Y., there is forwarded herewith permit for that work issued today.

Attention is invited to condition (i) of the permit. Notice should be sent to the U. S. Engineer Office, New York District, New York, N. Y., Room 710, Army Building, 39 Whitehall Street, New York City.

You are cautioned that if any material changes in the location or plans of the structure or work are found necessary on account of unforeseen or altered conditions or other causes, revised plans should be submitted promptly to the District Engineer to the end that these revised plans, if found unobjectionable from the viewpoint of navigation, [fol. 133] may receive the approval required by law before construction thereupon is begun.

Very truly yours, (S.) C. L. Hall, Colonel, Corps of Engineers, District Engineer.

1 Inclos.—
Permits 3548/5 (Permit)

[fol. 134] EMPLOYER'S EXHIBIT E-1

JPG/EHD/LSD

War Department

Note.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. It merely expresses the assent of the Federal Government so far as concerns the public rights of Navigation. (See *Cummings* v. *Chicago,* 188 U. S., 410.)

Permit

United States Engineer Office. New York District, New York, N. Y., 39 Whitehall Street, New York City, December 2, 1938.

Standard Dredging Corporation, 80 Broad Street, New York City, New York.

Permits 3548 5

GENTLEMEN:

Referring to written request dated November 9, 1938 and signed by Mr. C. B. Clarke, Executive Vice President.
[fol. 135] .....
I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of War, to dredge to a maximum depth of 50 feet below mean low water, dredged material to be deposited shoreward of a bulkhead to be constructed by the City of New York on or shoreward of the established bulkhead line or as authorized under War Department permit, ...

(Here describe the proposed structure of work.)

in Gravesend Bay, ...

(Here to be named the river, harbor, or waterway concerned.)

north of Norton Point, Borough of Brooklyn, New York City, N. Y., ...
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving directions by points of compass.)
in accordance with the plans shown on the drawing attached hereto and file marked Permits 3548/2, ...
(Or drawings; give file number or other definite identification marks.)
subject to the following conditions:

(a) That the work shall be subject to the supervision and approval of the District Engineer, Engineer Department at [fol. 136] Large, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment, the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly, and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material into the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Army Building, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interests of navigation, [fol. 137] all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of War, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required, upon due notice from the Secretary of War, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of War may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.

(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation [fol. 138] or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Bureau of Lighthouses, Department of Commerce, shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before the 31st day of December, 1941, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

By authority of the Secretary of War:

C. L. Hall, Colonel, Corps of Engineers, District Engineer.

1 Inclos.—

Permits 3548/2 (Drawing)

[fol. 139] Copy furn. Chief of Engrs., U. S. Army, with drawing.

Copy furn. Divn. Engr. N.A.D., with drawing.

Copy furn. Supervisor of N. Y. Harbor, with drawing.

Copy furn. Construction Section of the Operations Division with drawing.

Form No. 96.

Revised March 16, 1936.

[Annexed hereto is a map covering the proposed dredging in Gravesend Bay. It is identical with the map annexed to Employer's Exhibit D, reproduced heretofore, except that it bears the words "U. S. Bulkhead Line" and "U. S. Pierhead Line". It is omitted pursuant to stipulation.]

[fol. 140] EMPLOYER'S EXHIBIT F

Treasury Department

Washington

(Emblem)

Office of

Commissioner of Internal Revenue

Address Reply to

Commissioner of Internal Revenue

and Refer to

IT:RR
RFW

Jan. 4, 1937.

Mr. Clarence W. De Knight, Hibbs Building, Washington, D. C.

SIR:

Reference is made to Bureau letter dated August 21, 1936, in which it was held, among other things, that dredges used solely for digging under water, and not for navigation or the transportation even of the material which they bring up from the lake or river beds, are not vessels within the meaning of section 907 (c) (3) and section 811 (b) (5) of the Social Security Act. The case has been reconsidered.

In City of Los Angeles v. United Dredging Company, 14 F. (2d) 364 (1926), the court held that barges with dredging machinery thereon are "water craft capable of being used as a means of transportation on water; that they are built to be used in navigable waters, and are intended to transport machinery, supplies, and crews necessary to dig [fol. 141] out mud and other obstructions in harbors in aid of navigation." (p. 365) See also McMaster v. One Dredge, 95 F. 832 (1899); Bowers Hydraulic Dredging Company v. Federal Construction Company, 148 F. 290 (1906).

This office now holds that dredges which are intended and adapted for navigation and transportation by water of their crews, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstructions from channels and harbors in aid of navigation and

commerce are vessels within the meaning of section 811 (b) (5) and section 907 (c) (3) of the Act. Where such dredges are operated by the Standard Dredging Company of New York City in navigable waters of the United States, the services performed by the officers and members of the crew come within the excepting provisions of section 907 (c) (3) and the wages payable to the employees on account of such services should not be included in the computation of wages for the purpose of determining the employer's tax. If such dredges are documented under the laws of the United States, the services of the officers and members of the crew come within the excepting provisions of section 811 (b) (5) of the Act.

Bureau ruling dated August 21, 1936 is hereby modified accordingly.

Respectfully, Chas. T. Russell, Acting Commissioner.

(Here follows 1 photolithograph, side folios 142-143)

Employer's Exhibit C

[fols. 144-145] NOTE RE EMPLOYER'S EXHIBIT H

This exhibit consists of the wage schedule of Mike Cassaretakis from February 4, 1939 to August 17, 1939. It is omitted pursuant to stipulation and Employer-Appellant concedes claimant's wages for the relevant period of his employment.

NOTE RE EMPLOYER'S EXHIBITS I AND J

These exhibits consist of the weekly pay checks of Mike Cassaretakis from February 10, 1939 to August 12, 1939. They are omitted pursuant to stipulation and Employer-Appellant concedes claimant's wages for the relevant period of his employment.

[fol. 146] BEFORE DEPARTMENT OF LABOR

STIPULATION AS TO EXHIBITS

It is hereby stipulated and agreed that Employer's Exhibits A, that part of E-1 consisting of a map of proposed dredging, H, I and J, may be omitted from this Case on Appeal, but the originals thereof may be produced and referred to by counsel in their briefs and upon the argument with the same force and effect as if reproduced in said Case on Appeal.

Dated, this 28th day of August, 1941.

Kirlin Campbell Hickox Keating & McGrann, Attorneys for Appellant; John J. Bennett, Jr., Attorney-General, Attorney for Respondent, by Julia M. Cook, Assistant Attorney General.

[fol. 147] STIPULATION SETTLING CASE

It is hereby stipulated by and between the attorneys for the respective parties hereto, that the foregoing case contains all of the evidence taken upon the hearings and all exceptions of all parties and that an order may be entered herein settling the same as such and ordering the same on file without further notice.

Dated, New York, August 28th, 1941.

Kirlin Campbell Hickox Keating & McGrann, Attorneys for Appellant. John J. Bennett, Jr., Attorney for Respondent. By: Julia M. Cook, Assistant Attorney General.

[fol. 148] STIPULATION WAIVING CERTIFICATION

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the Notices of Appeals and material parts of the other papers in relation to the foregoing claim now on file in the office of the Department of Labor, and certification thereof pursuant to Section 616 of the Civil Practice Act is hereby waived.

Dated New York, August 28, 1941.

Kirlin Campbell Hickox Keating & McGrann, Attorneys for Appellant. John J. Bennett, Jr., Attorney General, Attorney for Respondent. By: Julia M. Cook, Assistant Attorney General.

[fol. 149] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

NOTICE OF APPEAL TO COURT OF APPEALS—January 23, 1942

[Title omitted]

SIR:

Please take notice that Frieda S. Miller, as Industrial Commissioner, hereby appeals to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court of the State of New York for

the Third Judicial Department, made and entered on the 1st day of December, 1941, unanimously reversing the decision of the Unemployment Insurance Appeal Board of the New York State Department of Labor, dated the 3rd day of March, 1941, and the said Appellant hereby appeals from the whole and each and every part of the said order.

Dated: Albany, New York, January 23, 1942.

Yours, etc., John J. Bennett, Jr., Attorney General, Attorney for Appellant, The Capitol, Albany, New York. By W. Gerard Ryan, Assistant Attorney General, 112 State Street, Albany, New York.

[fol. 150] To: Kirlin Campbell Hickox Keating & McGrann, Esqs., Attorneys for Employer-Respondent, 120 Broadway, New York, N. Y. Mike Cassaretakis, Claimant, 311 West 27th Street, New York, N. Y. Unemployment Insurance Appeal Board, 342 Madison Avenue, New York, N. Y. —— ——, Clerk, Appellate Division, Court House, Albany, N. Y.

[fol. 151] In Supreme Court of New York, Appellate Division

Order Appealed From—Entered December 1, 1941

Present: Hon. James P. Hill, Hon. John C. Crapser, Hon. F. Walter Bliss, Hon. Christopher J. Heffernan, Hon. Gilbert V. Schenck, Justices

In the Matter of the Claim for Benefits under Article 18 of the Labor Law made by Mike Cassaretakis, Claimant,

Standard Dredging Corporation, Employer-Appellant

Frieda S. Miller, as Industrial Commissioner, Respondent

The above named appellant having appealed to this Court from a decision of the New York Unemployment Insurance Appeal Board, No. 4014-40, made the 3rd day of March, 1941, holding that the above named claimant worked in employment covered by the New York Unemployment Insurance Law;

And, said appeal having come on for hearing before this Court at an Unemployment Insurance Term thereof com-

mencing on the 2nd Monday (the 10th day) of November, 1941, to wit, on the 11th day of November, 1941;

[fol. 152] And, H. Maurice Fridlund, Esq., of Kirlin, Campbell, Hickox, Keating & McGrann, of No. 120 Broadway, New York, N. Y., having submitted on behalf of said appellant;

And, W. Gerard Ryan, Esq., Assistant Attorney General of the State of New York, Albany, N. Y., having submitted the case on behalf of the Industrial Commissioner of the State of New York, respondent;

And, reply briefs on behalf of said appellant having been filed with this Court on the 19th day of November, 1941, pursuant to permission granted by this Court;

And, due deliberation having been had, and this Court having unanimously held in its decision handed down November 19, 1941, that said claimant did not work in employment covered by the New York Unemployment Insurance Law:

It Is Ordered, that said decision of the Appeal Board, No. 4014-40, made on the 3rd day of March, 1941, be and the same hereby is unanimously reversed, with costs to appellant.

(S.) John S. Herrick, Clerk. (Official Stamp.)

(Entered, December 1, 1941.)

[fol. 153] In Supreme Court of New York, Appellate Division

In the Matter of the Claim for Benefits under Article 18 of the Labor Law made by Mike Cassaretakis, Claimant,

Standard Dredging Corporation, Appellant,

Frieda S. Miller, as Industrial Commissioner, Respondent

Memorandum Decision—November 19, 1941

Appeal by employer-appellant from a decision of the Unemployment Insurance Appeal Board, which held that the New York Unemployment Insurance Law covered the services of the claimant as a cook and cook's helper aboard employer-appellant's dredge.

Claimant was employed by appellant first as a cook's helper and later as a cook aboard a hydraulic suction dredge documented as a vessel of the United States. His duties consisted of preparing meals, waiting on tables and cleaning up the kitchen and dining room. He ate his meals on board the dredge and customarily slept there. The dredge on which he was employed was operating on navigable waters of the state.

Clearly, claimant, a cook, was a member of the crew of a documented vessel operating on navigable waters. The [fol. 154] dredge was licensed and enrolled as a vessel of the United States. Accordingly, claimant is not subject to the jurisdiction of the Unemployment Insurance Law but is subject solely in respect of the matter in controversy here to the admiralty and maritime jurisdiction of the United States. (Article III, Section 2, Constitution of the United States.)

The grant of admiralty jurisdiction to the federal government was intended to commit direct control and to relieve maritime commerce of unnecessary burdens by reason of discordant legislation of the several states. (Knickerbocker Ice Co. v. Stewart, 253 U. S. 149.)

The Social Security Act specifically excepts from the term employment "services performed as an officer or member of the crew of a vessel on the navigable waters of the United States." (Section 1607 (c) (4) Internal Revenue Code. See also Matter of Bergen v. Miller, Industrial Commissioner, decided by this court November, 1941.)

Decision of the Unemployment Insurance Appeal Board should be reversed.

Decision of the Unemployment Insurance Appeal Board reversed, with costs to appellant.

Hill, P. J., Crapser, Bliss, Heffernan and Schenck, JJ., concur.

(No opinion written unless indicated hereon.)

[fol. 155] In Supreme Court of New York, Appellate Division

Affidavit of No Opinion—April 23, 1942

State of New York,
County of Albany, ss.:

W. Gerard Ryan, being duly sworn, deposes and says that he is an Assistant Attorney General in the office of John J. Bennett, Jr., Attorney General of the State of New York, attorney for the appellant herein, and that no written opinion or memorandum was handed down by the Appellate Division in deciding this appeal, except the memorandum decision of the Appellate Division handed down November 19, 1941, as hereinbefore printed.

W. Gerard Ryan.

Sworn to before me this 23rd day of April, 1942.
Harold F. Lea, Notary Public, Albany County.

In Supreme Court of New York, Appellate Division

Stipulation Waiving Certification to the Court of Appeals—April 23, 1942

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consist of true and correct copies of the papers on appeal to the Appellate Division, Third Department, the order of the Appellate Division appealed from, the memorandum decision of the Appel-
[fol. 156] late Division, and the notice of appeal as of right to the Court of Appeals, all of which are now on file in the office of the Clerk of the Appellate Division, Third Department, Albany, New York, and that certification thereof is hereby expressly waived.

Dated Albany, New York, April 23, 1942.

John J. Bennett, Jr., Attorney General, Attorney for Appellant, by W. Gerard Ryan, Assistant Attorney General. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Respondent.

[fol. 157] IN THE COURT OF APPEALS OF NEW YORK

OPINION—October 15, 1942

In the Matter of the Claim of Mike Cassaretakis.

Frieda S. Miller, as Industrial Commissioner of the State of New York, Appellant, Standard Dredging Corporation, Respondent, and Five Other Cases.

Appeals from two orders of the Appellate Division of the Supreme Court in the third judicial department, entered December 1, 1941 and December 10, 1941, respectively, which reversed decisions of the Unemployment Insurance Appeal Board determining that the claimants worked in employments subject to the unemployment insurance law (Labor Law, art. 18 [Cons. Laws, ch. 31]) and were entitled to be credited with their earnings in such employments as a basis for unemployment insurance benefits.

Appeal, by permission, from four orders of the Appellate Division of the Supreme Court in the third judicial department, entered November 19, 1941, each of which unanimously affirmed a decision of the Unemployment Insurance Appeal Board determining that the claimant in each such proceeding did not work in an employment subject to the unemployment insurance law (Labor Law, art. 18 [Cons. Laws, ch. 31]) and was not entitled to be credited with his earnings in such employment as a basis for unemployment insurance benefits.

John J. Bennett, Jr., Attorney-General (*Henry Epstein, W. Gerard Ryan* and *Francis R. Curran* of counsel), for appellant.

H. Maurice Fridlund, Jules Haberman, Frank C. Mason, Edward K. Bachman, James Ragan Roberts, Arthur E. Goddard, Robert B. Lisle and *Edward L. P. O'Connor* for respondents.

FINCH, J. These six appeals present the question whether the New York unemployment insurance law (Labor Law, art. 18; Cons. Laws, ch. 31) imposing a pay-roll tax upon all employers of four or more employees, without discrimination and without exception here material, is applicable to marine employments.

In four of the above cases the Unemployment Insurance Appeal Board has found that the claimants had been employed as members of the crews of vessels on the navigable

waters of the United States and for that reason the Board held that they were not covered by the unemployment insurance law. In the two remaining cases (*Matter of Cassaretakis* and *Matter of Bergen*) the Board has found that the claimants, although engaged in marine employments, had not been employed as members of the crews of vessels on the navigable waters of the United States, and on this basis held that they were covered by the statute in question.

Upon appeal to the Appellate Division, the decision of the Board in the four cases first mentioned above was sustained. In the other two cases, however, the determinations were reversed upon the ground that, by reason of the admiralty clause of the Federal Constitution, the unemploy-
[fol. 158] ment insurance statute may not be held applicable to maritime employments.

The definition of employment contained in the New York Act (Labor Law, § 502) is admittedly sufficiently broad to cover all maritime employments, including service as an officer or member of a crew of a vessel upon navigable waters of the United States, provided the whole or greater part of such employment is performed within this State. The Federal statute (U. S. Code, tit. 26, § 1607, subd. c), on the other hand, specifically excludes from the tax levied thereunder services rendered as officer or members of a crew of a vessel upon the navigable waters of the United States.

Whether or not an individual is a member of a crew of a vessel on the navigable waters of the United States presents primarily a question of fact which turns generally on whether the individual serves the ship in her navigation. (*South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, 259.) In consequence the determination of the Appeal Board, if sustained by substantial evidence, is conclusive upon the courts. (Labor Law, art. 18, § 534; *Matter of Morton*, 284 N. Y. 167.) Upon this record there is substantial evidence to sustain the findings of fact in this regard of the Appeal Board. As to the four claimants who were found to be members of the crews of vessels, Sheredos was a cook on a self-propelled vessel carrying petroleum between points in New York and New Jersey; Schein was an attendant on a speed boat which transported passengers from a New York city pier to the World's Fair; Knowlson was second engineer on a tugboat; Smith was a fireman on a lighter. All were plainly members of crews of vessels. On

the other hand, Cassaretakis was assistant cook on board a dredge which was employed in a land filling operation in connection with the construction of a public highway. Bergen was a grain-trimmer on a floating grain elevator, his work being in connection with transfer of grain from one barge to another for purposes of further transportation. The employment of these two latter claimants, therefore, may be deemed incidental to construction and stevedoring operations, respectively, rather than to navigation. In consequence, Cassaretakis and Bergen, although concededly engaged in general maritime employment, were not members of crews of vessels on the navigable waters of the United States. These two claimants have, moreover, been found to be engaged in employment the whole or greater part of which was transacted within this State.

Two questions of law are raised, (1) whether there is constitutional objection to the application of the statute in question to maritime employments generally, and (2) if there is no such constitutional objection, whether the Congress preempted that part of the field relating to navigation by enacting a statutory prohibition against coverage by the State law, of officers and members of the crew of a vessel on the navigable waters of the United States.

In order to induce the several States to enact unemployment insurance statutes, the Federal government, by the [fol. 158a] Federal Unemployment Tax Act (Internal Revenue Code, U. S. Code, tit. 26, §§ 1600, 1601) levied a pay-roll tax upon employers, with certain exceptions, but allowed a credit up to ninety per cent of the Federal pay-roll tax to employers on account of contributions paid for State unemployment insurance. On its part the State of New York has levied a pay-roll tax upon employers measured by a percentage of the pay-roll and assessed upon all employers generally without regard to the nature of employment, with certain exceptions not here material (Labor Law, art. 18, §§ 515, 516). Neither the National nor the State government contributes anything to the fund. The moneys collected by means of this tax are used for the relief of the unemployed, concededly an object within the powers of the State. (*Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495.)

This tax is an excise based upon the exercise of the privilege of employing individuals. (*Steward Machine Co.* v. *Davis*, 301 U. S. 548, 578-583; *Carmichael* v. *Southern Coal*

& Coke Co., supra; Patton v. Brady, 184 U. S. 608.) The obligations of the employer under this law are not to his employees but to the State. Likewise, claimants of benefits assert their rights against the State and not against the employer. The employer's duty to pay contributions and the employee's right to receive benefits are independent of each other. The employer must continue to pay the tax although none of his employees ever becomes entitled to benefits through lack of employment; the employee has a right to receive benefits upon becoming unemployed although his employer has failed to contribute.

A mere statement of this State law demonstrates that it does not modify or attempt to modify, alter or supplement the rights and liabilities of the parties to any maritime contract, nor does it touch remedies enforceable in admiralty. This tax exists independently of the employment out of which it arises. The measure of the tax by the amount of wages paid does not make the tax less independent of the occupation. Conceding that these claimants performed services under a maritime contract of employment, nothing in the challenged statute in any way changes, modifies or affects the reciprocal rights and duties of the employer and employee arising out of the maritime contracts or the remedies enforceable in admiralty. There is a fundamental distinction between statutes which interfere with the rights and obligations of the parties to a maritime contract, as between themselves, and a statute which effects no such interference.

The power to levy such an excise tax and to use the funds thus raised for local purposes is a sovereign power reserved to the States, of which they were not deprived by the Constitution of the United States. In *Carmichael* v. *Southern Coal & Coke Co.*, Mr. Justice Stone (now chief Justice) said: "Taxes * * * may likewise be laid on the exercise of personal rights and privileges. As has been pointed out by the opinion in the *Chas. C. Steward Machine Co.* case, such levies, including taxes on the exercise of the right to employ or to be employed, were known in England and [fol. 159] the Colonies before the adoption of the Constitution, and must be taken to be embraced within the wide range of choice of subjects of taxation, which was an attribute of the sovereign power of the States at the time of the adoption of the Constitution, and which was reserved to them by that instrument." (p. 505.)

It is contended, however, that the State may not thus exercise its reserved powers of taxation because it involves a conflict with paramount powers vested in the Federal government in two respects; *first*, the State law is alleged to interfere with and burden maritime commerce in its national and international aspects as to which Congress alone has power to legislate; *second*, the State law is also alleged to contravene the essential purposes of and to work prejudice to characteristic features of the maritime law, and to interfere with its proper harmony and uniformity in its interstate and international relations.

The paramount power of Congress to legislate in the field of maritime law is implied from the grant to the Federal courts in section 2 of article III of the Federal Constitution, of judicial power in all cases involving admiralty and maritime jurisdiction. It is, however, well settled that in the maritime field, just as in the field of interstate commerce generally, the state has power to act in matters of merely local concern, which do not require uniform national legislation. (*Cooley* v. *Board of Wardens*, 12 How. [U. S.] 299). One engaged in an interstate business may be lawfully subjected to a state tax upon the instruments employed in that business (*Western Union Telegraph Co.* v. *Attorney-General*, 125 U. S. 530), and this is so even though such commerce is maritime in nature. (*Old Dominion S. S. Co.* v. *Virginia*, 198 U. S. 299, 305.)

In addition, by section 1606, subd. (a) of the Federal Tax Act, the Congress has declared that state unemployment insurance laws may be applied to interstate commerce. And in *Perkins* v. *Pennsylvania*, 314 U. S. 586, affg., 342 Penn St. 529 the Supreme Court has held that there is no constitutional obstacle under the commerce clause to the application of the Pennsylvania unemployment insurance law to those employed in interstate commerce. This would seem to be a conclusive determination that unemployment among those engaged in interstate commerce in general is a matter of local concern as to which no uniform national legislation is needed and in which field, therefore, the states may constitutionally legislate.

As to the second objection noted above and based upon the limitations upon state legislation stated in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, it would seem to be a sufficient answer to repeat that the enactment in question is a taxing statute designed to raise funds for a state pur-

pose. It does not, therefore, attempt to alter the contract of employment between master and servant or to change the rights and remedies enforceable in admiralty as incidental to that relationship. It does not create any new rights or liabilities between the parties. Nothing contained [fol. 160] therein would cause a court of admiralty to alter in any respect the body of law which it applies to the cases pending before it.

That a state may, within prescribed limits, enter into the field of maritime law and add to or modify remedies enforceable in admiralty was conceded by Mr. Justice McReynolds in the *Jensen* case. In *Just* v. *Chambers* (312 U. S. 383) a statute of the State of Florida, providing that a cause of action for personal injuries shall survive the death of the tort feasor, was held to be applicable in a court of admiralty to an action against the owner of a vessel on account of injuries occurring on navigable waters within the State boundaries. The State law, it was said, did not offend the criteria of essential purpose and uniformity laid down in the *Jensen* case. If, therefore, the states may, within the prescribed limits, actually add to the remedies under maritime law, *a fortiori*, the legislation in the case at bar may not be held to have overridden the limitations set forth in the *Jensen* case.

Respondents point to a line of authorities (*Southern Pacific* v. *Jensen, supra; Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149; *Western Fuel Co.* v. *Garcia*, 257 U. S. 233; *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U. S. 469) holding workmen's compensation statutes invalid as interfering with the characteristic features and essential uniformity of admiralty law. These cases all rest upon the principle that the workmen's compensation laws set aside the common law rules respecting the rights and liabilities of employer and employee and substituted new rules for determining such rights and liabilities. These statutes become a part of the contract and thereby directly affect the rights and duties between the parties. As was said by this court in *Matter of Doey* v. *Howland Co.* (224 N. Y. 30, 36): "An award under the Workmen's Compensation Law is not made on the theory that a tort has been committed; on the contrary, it is upon the theory that the statute giving the commission power to make an award is read into and becomes a part of the contract. (*Matter of Post* v. *Burger & Gohlke*, 216 N. Y. 544.) The contract of employment, by

virtue of the statute, contains an implied provision that the employer, if the employee be injured, will pay to him a certain sum to compensate for injuries sustained, or if death results, a certain sum to dependents."

A clear distinction between these cases and that of the unemployment insurance law is that the latter does not in any way operate upon the contract of employment or interfere with maritime and admiralty jurisdiction. The payment of an excise tax upon the privilege of employing others can no more be considered an unwarranted intrusion by the states into admiralty jurisdiction than can numerous other state taxes previously upheld; for instance, franchise taxes upon towing companies (*People ex rel. Cornell Steamboat Co.* v. *Sohmer*, 235 U. S. 549); taxation of insurance companies upon the writing of marine insurance policies (*Aetna Ins. Co.* v. *Houston Oil & Transport Co.*, 49 Fed. Rep. [2d] 121); taxes upon shipping (*Transportation Co.* v. *Wheeling*, 99 U. S. 273; and tolls levied upon interstate and foreign shipping using state-[fol. 161] improved waterways. (*Sands* v. *Manistre River Improvement Co.*, 123 U. S. 288.)

It follows that there is no constitutional objection to coverage of maritime employments by the Unemployment Insurance Act of New York State.

We are thus brought to the second question, namely, whether by virtue of the provisions of section 1607 (subd. c) (par. 4) of the Internal Revenue Code (U. S. Code tit. 26), the officers and members of the crew of a vessel on the navigable waters of the United States have been specifically excluded by Congress from coverage by state laws. We may assume that Congress has the constitutional right under the admiralty clause of the Federal Constitution, to exclude maritime employments from coverage by state unemployment insurance.

In other words does the fact that the Federal Act in the case at bar exempts from its operation the officers and crews of vessels on navigable waters prevent the states from covering maritime employment in the unemployment insurance laws which they have enacted?

From the nature of the independent power reserved to the states of taxing for their own support and to promote the general welfare of their inhabitants, there has been developed the principle that it will not be presumed that

Congress intended to exclude the reserved powers of the state by virtue of paramount powers vested in Congress by the Federal Constitution unless an actual conflict exists between Federal and State legislation. In *Savage* v. *Jones* (225 U. S. 501) the court lays down this principle (at p. 533): "But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State."

A comparison of the Federal tax act and our State unemployment insurance act shows that there is no actual conflict between them even when the State act is construed to cover employments expressly exempted under the Federal taxing statute.

The Federal statute, of course, is not an unemployment insurance law. It is a mere taxing statute but contains a provision allowing ninety per cent of contributions exacted thereunder to be credited by employers against contributions paid under certified state systems. This credit arrangement was designed to give the states an incentive to enact their own unemployment insurance laws and to protect those states which enacted such laws against being put at a competitive disadvantage as against other states which might fail to take such action. Congress evidently believed that these objects could be accomplished by taxing only certain kinds of employment while exempting other kinds. The states in creating their unemployment systems, on the other hand, had different objectives in view in canvassing [fol. 162] the kinds of employment to be covered or excluded under their statutes. Their problem was to decide what types of employment seriously required the protection of an unemployment compensation law and what types could practically be included within such a system. Whatever types of employment the Congress might exclude, the states might exempt wholly different types upon the ground that employees in these categories did not require such protection or else that it would be impracticable or impolitic to furnish them with such protection. There is, therefore, no necessary similarity as to the types of employment either covered or exempted by the Federal and state statutes respectively.

The legislative history and the judicial interpretation of the Federal statute amply demonstrate that it was not intended thereby to strait-jacket the states in the enactment of their own unemployment insurance laws. (See Senate Report, No. 628, Cal. No. 661, 74th Congress, p. 14; *Steward Machine Co.* v. *Davis, supra,* at pp. 593, 594.) The conclusion is inescapable that Congress intended to leave to the states the widest possible latitude in setting up their unemployment compensation systems both as to the kind and extent of coverage provided. This broad policy may not be overriden by the exemptions contained in section 1607 (subd. c) (par. 4).

One word should be said in conclusion as to the argument advanced that great practical difficulties lie in the way of the states providing benefits for seamen, the nature of whose work may take them into many other states and even into foreign parts. A picture is drawn of the hopeless confusion into which maritime employment may be plunged if a number of states attempted to apply conflicting state statutes to the same employer-employee relationship. The difficulty conjured up would appear to be more imaginary than real and in no event could affect the result arrived at herein. It may be that Congress will in future decide to appropriate the entire marine field to a uniform unemployment insurance system. Such congressional action might effectively oust the states from the field because of the paramount power vested in Congress by section 2 of article III of the Federal Constitution. It is sufficient for the purpose of these appeals, however, to say that no such obstacle stands in the way of state legislation at the present time.

It follows that in the cases of the claimants, Cassaretakis and Bergen, the orders of the Appellate Division should be reversed and the determination of the Unemployment Insurance Appeal Board affirmed; in the cases involving Sheredos, Knowlson, Schein and Smith, the orders of the Appellate Division and the determination of the Unemployment Insurance Appeal Board should be reversed and the cases remitted to such Appeal Board for proceedings in accordance with this opinion, all with costs in this court and in the Appellate Division.

Lehman, Ch. J., Loughran, Rippey, Lewis, Conway and Desmond, JJ., concur.

Ordered accordingly.

[fol. 163] IN COURT OF APPEALS

REMITTITUR—October 16, 1942

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 15th day of October, in the year of our Lord one thousand nine hundred and forty-two, before the Judges of said Court.

Witness, the Hon. Irving Lehman, Chief Judge, Presiding. John Ludden, Clerk.

Remittitur October 16, 1942.

In the Matter of The Claim for Benefits under Article 18 of the Labor Law, made by MIKE CASSARETAKIS

Be It Remembered, That on the 12th day of May, in the year of our Lord one thousand nine hundred and forty-two, Frieda S. Miller, as Industrial Commissioner, the appellant in this cause, came here unto the Court of Appeals, by John J. Bennett, Jr., Attorney General, and filed in the said [fol. 164] Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Standard Dredging Corporation the respondent in said cause, afterwards appeared in said Court of Appeals by Kirlin, Campbell, Hickox, Keating & McGrann, its attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Henry Epstein, of counsel for the appellant, and by Mr. H. Maurice Fridlund, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is reversed and determination of Unemployment Insurance Appeal Board affirmed with costs in this court and in the Appellate Division.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court there to be proceeded upon according to law.

Therefore, it is considered that the said order of Appellate Division be reversed and determination of Unemploy-

ment Insurance Appeal Board affirmed with costs in this [fol. 165-166] court and in the Appellate Division, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, Third Judicial Department before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

[fol. 167] In Supreme Court of New York, Appellate Division

Judgment on Remittitur—October 22, 1942

At a term of the Appellate Division of the Supreme Court of the State of New York, in and for the Third Department, held at the Court House, City of Albany, State of New York, commencing on the 21st day of September, 1942.

Present Hon. James P. Hill, Presiding Justice; Hon. John C. Crapser, Hon. F. Walter Bliss, Hon. Christopher J. Heffernan, Hon. Gilbert V. Schenck, Associate Justices.

In the Matter of the Claim for Benefits under Article 18 of the Labor Law, made by Mike Cassaretakis, Claimant,

Frieda C. Miller, as Industrial Commissioner, Appellant,

Standard Dredging Corporation, Employer-Respondent

Appellant above named having appealed to the Court of Appeals of the State of New York from the order of the Appellate Division, Third Department, entered in the office of the Clerk of said Court on the 1st day of December, 1941, unanimously reversing the decision of the Unemployment Insurance Appeal Board of the New York State Department of Labor, dated the 3rd day of March, 1941, with costs against the Industrial Commissioner; and the said appeal having been argued at the Court of Appeals by John

J. Bennett, Jr., Attorney General, Henry Epstein, Solici-
[fol. 168] tor General for Appellant; and by Kirlin Campbell Hickox Keating & McGrann, by H. Maurice Fridlund, Esq. of Counsel, for the Respondent; and after due deliberation of the Court of Appeals having rendered a decision and opinion herein and having ordered that the said order so appealed from be reversed and the determination of the Unemployment Insurance Appeal Board be affirmed with costs in this Court and in the Appellate Division and having further ordered that the matter be remitted to the Appellate Division of the Supreme Court, Third Department, there to be proceeded upon according to law; and the Remittitur from the said Court of Appeals having been filed herein.

Now, upon motion of John J. Bennett, Jr., Attorney General, Attorney for the Industrial Commissioner, it is hereby

Ordered that the order of the said Court of Appeals be and the same hereby is made the order of this Court, and it is further

Ordered that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is reversed and determination of the Unemployment Insurance Appeal Board be affirmed with costs in this Court and in the Appellate Division.

(S.) John S. Herrick, Clerk, by Clyde Booker, Deputy Clerk. (Seal.)

Ent. 10/22/42.

[fol. 169] Supreme Court of the United States

In the Matter of the Claim for Benefits under Article 18 of the Labor Law Made by Mike Cassaretakis, Claimant,

Standard Dredging Corporation, Employer, Appellant,

Frieda S. Miller, Industrial Commissioner, Appellee

Order Allowing Appeal—January 6, 1943

The petition of Standard Dredging Corporation, the appellant in the above entitled cause, for an appeal in the above case to the Supreme Court of the United States from a final order of the Court of Appeals of the State of New York, dated October 15, 1942, reversing an order of the

Appellate Division of the Supreme Court of the State of New York, Third Department, entered on the 10th day of November, 1941, having been filed with the Clerk of this Court and presented herein, accompanied by assignment of errors and prayer for reversal, and statement as to jurisdiction, all as provided by the Rules of the Supreme Court [fol. 170] of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final order of the Court of Appeals of the State of New York, dated October 15, 1942, reversing an order of the Appellate Division of the Supreme Court of the State of New York, Third Department, entered on the 10th day of November, 1941, as prayed for in said petition, and that the Clerk of said Appellate Division of the Supreme Court of the State of New York shall, within forty days from this date, make and transmit to the Supreme Court of the United States under his hand and the seal of said Court a true copy of the material parts of the record herein which shall be designated by praecipe or stipulation of the parties, or their counsel herein, all in accordance with the Rules of the Supreme Court of the United States.

It Is Further Ordered that the said appellant shall give a good and sufficient bond in the sum of $250.00, that said appellant shall prosecute said appeal to effect and answer all costs if he fail to make his plea good, and that said bond, when filed and approved, shall stay the sending down of the mandate herein and all proceedings in this cause until [fol. 171] the final disposition of this cause by the Supreme Court of the United States.

Dated January 6, 1943.

(Signed) Irving Lehman, Chief Judge of the Court of Appeals, State of New York.

[fol. 172] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—December 30, 1942

To the Chief Judge of the Court of Appeals of the State of New York:

Your petitioner, Standard Dredging Corporation, respectfully shows:

1. Petitioner is a corporation organized and existing under the laws of the State of New York and is the appellant in the above entitled cause.

2. The petitioner employed Mike Cassaretakis, the claimant herein, during the period from March 15th to August 17th, 1939, first as a cook's helper and later as a night cook aboard one of petitioner's dredges then operating on the [fol. 173] navigable waters of Gravesend Bay, New York Harbor, adjacent to the Borough of Brooklyn, New York City, pursuant to a permit issued by the United States Engineers Office, War Department. The dredge upon which the claimant was so employed was a hy*rd*aulic suction derdge documented as a vessel of the United States.

3. This cause originated by the filing by claimant with the Division of Placement and Unemployment Insurance, New York State Labor Department, of a request for a hearing to determine whether the claimant's employment by the petitioner was covered by the New York Unemployment Insurance law, thus requiring the petitioner to make contributions to the New York unemployment insurance fund based upon the wages paid to claimant.

4. After a hearing before one of the Referees appointed for that purpose by the New York State Industrial Commissioner, the Referee rendered a decision holding, contrary to the contentions of the petitioner, that claimant was not a member of the crew of a vessel operating on the navigable waters of the United States; that there was no constitutional prohibition against the coverage by the New York Unemployment Insurance Law of maritime employment; that said law did cover such employment; and that the petitioner was liable for contributions based upon the [fol. 174] wages paid to the claimant.

5. The petitioner thereupon appealed from the Referee's decision to the New York Unemployment Insurance Appeal Board specifying as the grounds for such appeal, among others, that the claimant was employed as a member of the crew of a vessel, documented under the laws of the United States, on navigable waters of the United States; that the claimant's employment was maritime in nature and therefore subject to the exclusive jurisdiction of the Federal Government; that such employment was not covered by the New York Unemployment Insurance Law; and that, if such employment was intended to be so covered, the said law was unconstitutional and void.

6. On March 3, 1941, the Unemployment Insurance Appeal Board rendered a decision which affirmed the decision of the Referee and adopted as its own the Referee's findings of fact and conclusions of law.

7. On appeal by the petitioner, the Appellate Division of the New York Supreme Court, Third Department, reversed the decision of the Appeal Board. In its memorandum decision the Court said:

"Clearly, claimant, a cook, was a member of the crew of a documented vessel operating on navigable waters. The dredge was licensed and enrolled as a vessel of the United States. Accordingly, claimant is not subject to the juris- [fol. 175] diction of the Unemployment Insurance Law but is subject solely in respect of the matter in controversy here to the admiralty and maritime jurisdiction of the United States. (Article III, Sec. 2, Constitution of the United States.)

"The grant of admiralty jurisdiction of the federal government was intended to commit direct control and to relieve maritime commerce of unnecessary burdens by reason of discordant legislation of the several states. (Knickerbocker Ice Co. v. Stewart, 253 U. S. 149.)"

8. On appeal by the Industrial Commissioner, the appellee herein, the Court of Appeals, by order dated October 15, 1942, reversed the order entered on the decision of the Appellate Division, Third Department, and held (1) that there is no constitutional objection to the coverage of maritime employment by the New York Unemployment Insurance Law; (2) that Congress did not exclude maritime employments from coverage by State unemployment insurance

by the enactment of Section 1607 (c)(4) of the Internal Revenue Code, which excludes from the coverage of the Federal Social Security Act, officers and members of the crew of a vessel on the navigable waters of the United States; and (3) that the determination of the Unemployment Insurance Appeal Board that the claimant was not a member of the crew of a vessel on the navigable waters of the United States involved solely a question of fact which, being supported in the record by substantial evidence, was conclusive upon the courts. In accordance with such decision and upon the coming down of the remittitur [fol. 176] from the Court of Appeals, an order was entered and filed in the office of the Clerk of the Appellate Division, Third Department, on October 22, 1942, reversing the order theretofore entered on the decision of said Appellate Division.

9. The Court of Appeals is the highest court of the State of New York in which a decision herein can be had.

10. In this cause there is drawn in question the validity of a statute of New York State on the ground that said statute, as here applied, is repugnant to the Constitution and laws of the United States, and the decision is in favor of its validity, notwithstanding your petitioner's contention that said statute, as here applied, violates Section 2 of Article III of the Constitution of the United States.

11. Therefore, in accordance with § 237 (a) of the Judicial Code, and in accordance with the Rules of the Supreme Court of the United States, your petitioner respectfully shows this Court that the case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, to wit, under § 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on writ of error as a matter of right.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of errors, filed herewith, pursuant to Rules 9 and 46 of the [fol. 177] Rules of the Supreme Court of the United States; and there are likewise filed herewith statements as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the said Court of Appeals of the State of New York, the highest court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the final order of the said Court of Appeals reversing the order of the Appellate Division of the Supreme Court of the State of New York, Third Department, entered on the 10th day of November, 1941, may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Appellate Division of the Supreme Court of the State of New York, Third Department, under his hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioner, and that the cost bond tendered by the petitioner be approved and that the said appeal may operate as a supersedeas.

Dated December 30, 1942.

H. Maurice Fridlund, Attorney for Petitioner.

[fol. 178] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR—December 30, 1942

The petitioner assigns the following errors in the record and proceedings in this cause:

1. The Court of Appeals of the State of New York erred in holding that the New York Unemployment Insurance Law, New York Labor Law, Article 18 (Consolidated Laws, Chapter 31), when applied to maritime employment, is valid and does not violate the provisions of Article III, Section 2, of the Constitution of the United States.

2. The said Court erred in holding that the Congress of the United States had not excluded maritime employment [fol. 179] from coverage by State unemployment insurance by the enactment of Section 1607 (c)(4) of the Internal Revenue Code and thereby rendering the New York Unemployment Insurance Law, when applied to maritime em-

ployment, invalid and violative of Article III, Section 2 of the Constitution of the United States.

3. The said Court erred in refusing to review the determination of the New York Unemployment Insurance Appeal Board that claimant, a cook aboard a dredge documented under the laws of the United States and operating on navigable waters, was not a member of the crew of a vessel.

4. The said Court erred in failing to hold, as a matter of law, that claimant, a cook aboard a dredge documented under the laws of the United States operating on navigable waters, was a member of the crew of a vessel.

Wherefore, on account of the errors hereinbefore assigned, appellant prays that the said order of the Court of Appeals of the State of New York and the order of the Appellate Division of the Supreme Court of the State of New York, Third Department, entered on the remittitur from the Court of Appeals, on October 22, 1942, be reversed and an order directed to be entered in favor of the appellant.

Dated December 30, 1942.

H. Maurice Fridlund, Attorney for Appellant.

[fols. 180-181] Citation, in usual form, showing service on Mike Cassaretakis omitted in printing.

[fols. 182-183] Cost Bond on Appeal for $250.00, approved, omitted in printing.

[fol. 184] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR RECORD—February 1, 1943

To the Clerk of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department:

You are hereby requested to make a transcript of the record herein to be transmitted to the Supreme Court of the United States pursuant to the order of the Chief Judge of

the Court of Appeals of the State of New York, dated January 6, 1943, in the above mentioned cause and to include in such transcript:

1. The papers and records as shown in the return and transcript on file in the Appellate Division of the Supreme [fol. 185] Court of the State of New York, Third Judicial Department, making the order and judgment of the Court of Appeals the judgment of said Appellate Division;

2. The papers filed in the office of the Clerk of said Court pursuant to the Rules of the Supreme Court of the United States.

Dated February 1, 1943.

H. Maurice Fridlund, Counsel for Appellant, 120 Broadway, New York, N. Y.

[fol. 186] AFFIDAVIT OF SERVICE OF PRAECIPE

JAMES J. CURRAN, being duly sworn, deposes and says:

That on the 1st day of February, 1943 I served the within Praecipe for Transcript of Record on Mike Cassaretakis, 264 West 25th Street, New York, N. Y., the claimant, and Nathaniel Goldstein, Attorney General of the State of New York, attorney for Industrial Commissioner of the State of New York, Albany, N. Y., through the Post Office, by depositing copies of said Praecipe for Transcript of Record, each properly enclosed in sealed postpaid wrappers, [fol. 187] directed to said claimant and Attorney General at the addresses hereinbefore indicated, in a Post Office Box maintained by the United States Government at 120 Broadway, New York, N. Y.

James J. Curran.

Sworn to before me this 3rd day of February, 1943. (Seal) William A. Sheehan, Notary Public, Kings County, Kings Co. Clk. No. 616, New York Co. Clk. No. 1924. Commission expires March 30, 1944.

[fols. 188-189] Clerk's Certificate to foregoing transcript omitted in printing

[fols. 190-192] SUPREME COURT OF THE UNITED STATES

In the Matter of the Claim for Benefits Under Article 18 of the Labor Law, Made by MIKE CASSARETAKIS, Claimant,

STANDARD DREDGING CORPORATION, Employer, Appellant,

FRED S. MILLER, Industrial Commissioner, Appellee

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—February 11, 1942

Comes now the appellant, Standard Dredging Corporation, and adopts its assignments of error as its statement of the points to be relied upon, and represents that the whole of the record as filed is necessary for the consideration of the case.

Dated, February 6, 1943.

H. Maurice Fridlund, Counsel for Standard Dredging Corporation, Appellant, Office and P. O. Address, 120 Broadway, New York, N. Y.

[fol. 192a] [Endorsed:] Supreme Court of the United States In the Matter of The Claim for Benefits under Article 18 of the Labor Law, made by Mike Cassaretakis, Claimant, Standard Dredging Corporation, Employer, Appellant, Frieda S. Miller, Industrial Commissioner, Appellee, Statement of points to be relied upon and designation as to printing record. H. Maurice Fridlung, Attorneys for Appellant, Kirlin Campbell Hickox Keating & McGrann, 120 Broadway, New York, N. Y.

[fol. 193] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 722

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—March 8, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The Solicitor General is requested to file a

brief as amicus curiae and to participate in the oral argument if he so desires.

Endorsed on Cover: File No. 47, 223, New York, Supreme Court, Term No. 722, Standard Dredging Corporation, Appellant, vs. Frieda S. Miller, as Industrial Commissioner of the State of New York, and Mike Cassaretakis. Filed February 11, 1943. Term No. 722 O. T. 1942.